

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia

APRIL TERM, 1928.

No. 4797.

—568

JOHN L. MCGREW AND CATHERINE D. MCGREW,
APPELLANTS,

vs.

OLIVE S. MCGREW.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 7, 1928.

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APPELLANTS,

vs.

OLIVE S. MCGREW, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original	Print
Caption	<i>a</i>	1
Bill	1	1
Short copy of costs.....	19	16
Joint and several answer of John L. McGrew and Catherine D. McGrew.....	20	17
Decree	28	24
Appeal noted; cost bond fixed at \$100; supersedeas bond, \$5,000	30	26
Memoranda: Undertaking on appeal (defendants'), \$5,000, approved and filed; defendants' statement of evidence and notice filed.....	31	26
Assignments of error.....	31	26
Designation of record.....	32	28
Memorandum: Defendants' statement of evidence signed and filed	33	28
Clerk's certificate.....	34	29
Statement of evidence.....	35	29
Testimony of Max Schock.....	35	29
Olive S. McGrew.....	35	29
Gladys E. Apple.....	41	35
W. W. Duffey.....	42	35
Edward R. Deane.....	42	35
James W. Ireland.....	43	36
G. M. Stevenson.....	43	36
Carl A. Heisterman.....	44	36

Court of Appeals of the District of Columbia

No. 4797.

JOHN L. MCGREW and CATHERINE D. MCGREW, Appellants,

vs.

OLIVE S. MCGREW.

a Supreme Court of the District of Columbia.

In Equity.

No. 46273.

OLIVE S. MCGREW, Plaintiff,

vs.

JOHN L. MCGREW and CATHERINE D. MCGREW, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Bill.

Filed Nov. 3, 1926.

In the Supreme Court of the District of Columbia.

In Equity.

No. 46273.

OLIVE S. MCGREW, Plaintiff,

vs.

JOHN L. MCGREW and CATHERINE D. MCGREW, Defendants.

Plaintiff respectfully represents:

(1) That she is a citizen of the United States, a resident of the District of Columbia, and brings this suit in her own right.

(2) The defendants are husband and wife, citizens of the United States and residents of the District of Columbia, and are sued in their own rights respectively.

(3) That heretofore, to wit, on March 30, 1921, plaintiff recovered against defendant John L. McGrew, in cause No. 65117 in the Supreme Court of the District of Columbia, a judgment for \$7,629.75, with interest on \$240 thereof from February 15, 1918, on \$240 thereof from August 15, 1918, and on \$7,149.75 thereof from February 15, 1919, together with costs of suit, amounting to \$46.50.

(4) Defendant John L. McGrew, to wit, on April 19, 1921, appealed from said judgment to the Court of Appeals of the District of Columbia, which Court, on April 3, 1922, affirmed the said judgment.

(5) On, to wit, January 2, 1923, execution was issued on said judgment, and was returned nulla bona. A short copy of the said judgment is hereto attached and made a part hereof.

2 (6) That, to wit, on February 15, 1916, when the indebtedness represented by the aforesaid judgment was incurred by the defendant John L. McGrew, which said indebtedness was evidenced as of that date by said defendant's promissory notes, the principal of said notes to mature in three years, he was financially solvent and well able

to pay the same, and was the owner of record of certain lands in Fauquier County, Virginia, comprising eight hundred and seventy (870) acres; and was also the owner of improved real estate situated in the District of Columbia, known and described as premises No. 1855 Newton Street, N. W., which said premises stood in the name of one Lee Brown, as will appear later herein, who, plaintiff is informed and believes, and therefore avers, was the holder of record of the title for the benefit of defendant John L. McGrew.

(7) On, to wit, January 15, 1923, plaintiff filed a judgment creditor's bill against the defendants John L. McGrew and Catherine D. McGrew, based on the aforesaid judgment, said suit being Cause No. 41397 in the Supreme Court of the District of Columbia, praying that said defendants might severally discover and disclose the interests of each respectively in certain parcels of real estate therein specifically set out. That to the interrogatories propounded by plaintiff to be answered by each of said defendants, objections were sustained, on appeal, by the Court of Appeals of said District, on the principal ground that the same required them to testify against one another, and to disclose confidential communications between them as husband and wife. That thereafter plaintiff's bill was dismissed, and a writ of certiorari was refused by the Supreme Court of the United States on June 5, 1926.

3 (8) That the aforesaid judgment remains and is in full force and effect, and that plaintiff has never received payment of the same or any part thereof.

(9) That as the result of exhaustive and prolonged search and inquiry on the part of plaintiff to find any assets or property of the defendant John L. McGrew which could be levied upon to satisfy the aforesaid judgment, which investigation, after much difficulty, she has only recently been able to complete, to wit, within the past year, she alleges that the defendants John L. McGrew *a* and Catherine D. McGrew on, to wit, January 3, 1917, entered into a conspiracy, in pursuance of which defendant John L. McGrew has been stripped of all of his money and property for the express purpose of delaying, hindering and defrauding his creditors, and to render him insolvent and unable to pay the aforesaid indebtedness and judgment, which said conspiracy plaintiff alleges still continues, all as hereinafter set out.

(10) Plaintiff alleges that the aforesaid property No. 1855 Newton Street, N. W., was, on, to wit, February 19, 1915, and prior thereto, the property, as tenants in common, of defendant John L. McGrew and plaintiff, who was then his wife; that on the aforesaid date, in pursuance of an agreement to convey her half interest in said property to said defendant, and in order to effect said conveyance, plaintiff joined said defendant in conveying said real estate and improvements to one Lee Brown, by deed dated February 19, 1915, recorded March 5, 1915, among the land records of said District in Liber 3784, at folio 85; and plaintiff alleges that the said Lee Brown paid no valid consideration therefor, and held the title of record, as she is informed and believes, and therefore avers, for the benefit of said defendant, as hereinbefore set out.

4 That prior to the aforesaid conveyance, to wit, on August 16, 1913, defendant John L. McGrew and plaintiff, who was then his wife, executed a deed of trust to the aforesaid property with the improvements to Albert B. Ruff and Jacob N. Belt, Trustees, to secure a penal bond of \$5,000 to Odell S. Smith, Treasurer of the Home Mutual Building and Loan Association of the said District, which bond was to be forfeited upon non-payment of a loan of \$3,500 made by the said Association to defendant John L. McGrew, said deed of trust being dated August 16, 1913, and recorded September 12, 1913, among the land records of said District in Liber 3640, at folio 492. Plaintiff alleges that, to wit, between August 16, 1913, and March 8, 1916, there was paid by defendant John L. McGrew, in partial discharge of the aforesaid loan of \$3,500, \$500 together with a sum equal to the interest thereon, all of which was the sole property of said defendant.

That subsequent to the aforesaid conveyance of said property by plaintiff and defendant John L. McGrew to the said Lee Brown, the following conveyances were effected, whereby said defendant exchanged the aforesaid No. 1855 Newton Street, N. W., for premises known as No. 1680 Irving Street, N. W., in which conveyances plaintiff is informed and believes, and therefore avers, the said Lee Brown had no beneficial interest, but held the title of record for the benefit of said defendant, and she alleges that such money and other valuable considerations as passed in con-

sideration of said conveyances, were all the money and property of said defendant, and were paid out at his instance and request:

5 March 8, 1916, said Lee Brown, at the request of said defendant, conveyed No. 1855 Newton Street, N. W., to Henry Clay Johnson, by deed dated March 8, 1916, and recorded among the land records of said District on March 10, 1916, in Liber 3870, at folio 224.

March 8, 1916, Henry Clay Johnson, et ux., in consideration of above conveyance and a payment of \$2,000, at the request of said defendant, conveyed premises known as No. 1680 Irving Street, N. W., in said District, to one Philip M. O'Bryon, by deed dated March 8, 1916, and recorded among the land records of said District on March 10, 1916, in Liber 3870, at folio 219, which said last named grantee, plaintiff is informed and believes, and therefore avers, had no beneficial interest in said property, and held the title of record for the benefit of said defendant.

March 8, 1916, Philip M. O'Bryon, at the request of said defendant, executed a deed of trust to said No. 1680 Irving Street, N. W., to Algernon S. Gardiner and W. Gilbert Dent, Trustees, to secure said Henry Clay Johnson \$1,000, dated March 8, 1916, and recorded among the land records of said District on March 10, 1916, in Liber 3870, at folio 220.

March 8, 1916, Philip M. O'Bryon, at the request of said defendant, conveyed No. 1680 Irving Street, N. W., to said Lee Brown, by deed dated March 8, 1916, recorded among the land records of said District on May 4, 1916, in Liber 3886, at folio 109.

(11) That on Janaury 3, 1917, defendants John L. McGrew and Catherine D. McGrew became husband and wife; and plaintiff is inforced and believes, and therefore avers, that at the time of said marriage defendant Catherine D. McGrew had no separate estate.

(12) That, to wit, on March 28, 1917, defendant John L. McGrew exchanged his aforesaid tract of eight hundred and seventy acres of land in Fauquier County, Virginia, to which property plaintiff alleges he had sole title of record, for premises known as No. 707 Twentieth Street, N. W., in the District of Columbia, said last named property being conveyed to him by Henry P. Amos, et ux., by deed dated

March 28, 1917, recorded March 29, 1917, among the
6 land records of said District in Liber 3970, at folio
103. That said defendant took the said property sub-
ject to an encumbrance of \$22,000, evidenced by a deed of
trust by Ernest G. Walker, et ux., to Harry L. Rust and
George Calvert Bowie, Trustees, dated and recorded on
June 24, 1916, among the land records of said District in
Liber 3892, at folio 444, to secure A. Elizabeth Oliphant
\$22,000; and that on the said date of March 28, 1917, said
defendant also executed a deed of trust to Algernon S.
Gardiner and W. Gilbert Dent, Trustees, to secure said
P. Amos \$25,000, in which defendant Catherine D. Mc-
Grew joined, said deed of trust being recorded March 29,
1917, among the land records of said District in Liber 3970,
at folio 103. And plaintiff alleges that the consideration
paid to the said Henry P. Amos, et ux., for the said con-
veyance, was the property in its entirety of defendant John
L. McGrew.

(13) That thereafter, to wit, on May 26, 1917, four months
after the marriage as aforesaid of said defendants, and
while the aforesaid indebtedness of defendant John L. Mc-
Grew to plaintiff was outstanding and unpaid, defendant
John L. McGrew conveyed the said property to the afore-
said Lee Brown, his co-defendant joining in said convey-
ance, by deed dated May 26, 1917, recorded the same day
among the land records of said District in Liber 3984, at
folio 175. Said deed recites a nominal consideration of \$10,
and bears no revenue stamps; and plaintiff alleges the said
conveyance was without valid consideration therefor, and
she is informed and believes, and therefore avers, that the
said Lee Brown had no beneficial interest in the said prop-
erty, and held the title of record for the benefit of defend-
ant John L. McGrew, and she alleges the said conveyance
was made for the express purpose of defrauding plaintiff
and preventing her enforcing payment of the afore-
7 said indebtedness.

(14) On the same day, to wit, May 26, 1917, at the
request of defendant John L. McGrew, the said Lee Brown
conveyed the aforesaid properties, No. 1680 Irving Street,
N. W., and No. 707 Twentieth Street, N. W., to defendant
Catherine D. McGrew, as follows:

No. 1680 Irving Street, N. W., by deed dated May 26,

1917, recorded on the same day among the land records of said District in Liber 3984, at folio 174.

Said deed recites a nominal consideration of \$10, and bears no revenue stamps.

No. 707 Twentieth Street, N. W., by deed dated May 26, 1917, recorded May 28, 1917, among the land records of said District in Liber 3993, at folio 10.

Said deed recites a nominal consideration of \$10, and bears no revenue stamps.

Plaintiff alleges the said conveyances were without any valid consideration, and were made for the express purpose of defrauding plaintiff, and preventing her enforcing the liability incurred by defendant John L. McGrew as aforesaid.

(15) That subsequent to the conveyances so as aforesaid made to defendant Catherine D. McGrew, defendant John L. McGrew defaulted in payment of the interest notes on his aforesaid indebtedness to plaintiff.

(16) That, to wit, between March 28, 1917, and January 24, 1919, there was paid by defendant John L. McGrew, in partial discharge of the said debt to Henry P. Amos of \$25,000 under the aforesaid deed of trust in Liber 3970, at folio 103, \$2,200, together with interest thereon, which said money, plaintiff alleges, was the property in its entirety of said defendant.

8 (17) On, to wit, January 24, 1919, twenty-three days before the principal note representing the aforesaid indebtedness of defendant John L. McGrew to plaintiff, matured, the said defendants John L. McGrew and Catherine D. McGrew, still confederating and conspiring to defraud plaintiff and to place beyond reach the property of defendant John L. McGrew, conveyed the aforesaid property No. 707 Twentieth Street, N. W., so as aforesaid held in the name of defendant Catherine D. McGrew, to Frederick L. Payne, et ux., by deed dated January 24, 1919, recorded among the land records of said District on January 30, 1919, in Liber 4139, at folio 437. In consideration of said conveyance there was paid to defendant Catherine D. McGrew, \$5,500, which said amount plaintiff alleges belonged in its entirety to defendant John L. McGrew.

(18) On February 15, 1919, defendant John L. McGrew defaulted in the payment of the principal note representing his aforesaid indebtedness to plaintiff.

(19) That on September 6, 1919, the deed of trust to No. 1680 Irving Street, N. W., dated March 8, 1916, recorded in Liber 3870, at folio 220, was released to said Philip M. O'Bryon by an instrument dated September 6, 1919, executed by Algernon S. Gardiner and W. Gilbert Dent, recorded September 8, 1919 among the land records of said District in Liber 4248, at folio 51. And plaintiff alleges that the \$1,000, together with a sum equal to the interest thereon, which was paid to discharge the said loan by defendant John L. McGrew in the name of defendant Catherine D. McGrew, was the sole property of the first named defendant.

(20) On, to wit, April 1, 1920, while a suit, being Cause No. 62195 in the Supreme Court of the District of Columbia, brought by plaintiff against defendant John L. McGrew on the notes representing his aforesaid indebtedness, was pending, the defendants John L. McGrew and Catherine D. McGrew, further confederating and conspiring to defraud plaintiff and to place beyond reach the property of defendant John L. McGrew, conveyed the aforesaid property No. 1680 Irving Street, N. W., so as aforesaid held in the name of defendant Catherine D. McGrew, to one Georgella Forbes, by deed dated April 1, 1920, recorded April 7, 1920 among the land records of said District in Liber 4354, at folio 21. In consideration of said conveyance there was paid to defendant Catherine D. McGrew \$7,000, which amount plaintiff alleges belonged solely to defendant John L. McGrew. On the said date of April 1, 1920, the said Georgella Forbes also executed a deed of trust to Claud Livingston and Arthur C. Israel, Trustees, securing defendant Catherine D. McGrew \$5,500, said deed of trust being recorded April 7, 1920 among the land records of said District in Liber 4354, at folio 22; and, to wit, between April 1, 1920 and June 24, 1924, the said amount of \$5,500 was also paid to defendant Catherine D. McGrew, together with interest thereon, all of which, plaintiff alleges, was the property in its entirety of defendant John L. McGrew. That on the aforesaid date of, to wit, June 24, 1924, the said Claud Livingston and Arthur C. Israel,

Trustees, executed a release discharging said deed of trust, said instrument being recorded July 2, 1924, among the land records of said District in Liber 5278, at folio 168.

(21) Plaintiff alleges that as a result of the aforesaid transfers of property, deeds, deeds of trust, and payments, defendant Catherine D. McGrew, without paying or delivering any consideration therefor whatsoever, and prejudicially to the rights of the creditors of defendant John L. McGrew, came into possession, to wit, between January 24, 1919 and June 24, 1924, of the following amounts:
10 \$5,500; \$7,000, and \$5,500, all as hereinbefore set out, making an aggregate amount of \$18,000, all of which plaintiff alleges was the sole property of defendant John L. McGrew, and which defendant Catherine D. McGrew, in pursuance, of the aforesaid conspiracy, held in her name for the express purpose, and with the result, of rendering defendant John L. McGrew insolvent, and preventing plaintiff enforcing payment of the aforesaid indebtedness.

(22) Plaintiff further alleges that on, to wit, April 30, 1920, while plaintiff's aforesaid suit was pending against him, defendant John L. McGrew, still conspiring with defendant Catherine D. McGrew to delay, hinder and defraud his creditors, and to evade payment of his aforesaid indebtedness to plaintiff, purchased from Edmund Joseph Brennan, et ux., by and in the name of defendant Catherine D. McGrew, premises known as No. 3168 Eighteenth Street, N. W., in said District, by deed dated April 30, 1920, recorded among the land records of said District on May 3, 1920, in Liber 4366, at folio 114. That there was paid by defendant Catherine D. McGrew, at the request of defendant John L. McGrew, as cash consideration for said conveyance, \$5,000, all of which plaintiff alleges was the exclusive property of defendant John L. McGrew and was realized from the transactions hereinbefore set out and from salary of defendant John L. McGrew, as will hereafter appear; that defendant Catherine D. McGrew, at the request of defendant John L. McGrew, also assumed payment of an encumbrance of \$4,000 with interest thereon, evidenced by deed of trust by Henry C. Finkel to B. Francis Saul and J. Wriley Jacobs, Trustees, securing Thomas E.

Allen \$4,000, dated January 22, 1918, and recorded among the land records of said District on January 24, 1918 in Liber 4037, at folio 431; that defendant Catherine D. Mc-

11 Grew, also, at the request of defendant John L. McGrew, on, to wit, May 1, 1920, executed a deed of trust to William S. Phillips and James H. Holmes, Trustees, to secure said Edmund Joseph Brennan payment of \$2,000 with interest thereon, said deed of trust being dated May 1, 1920, and recorded on May 3, 1920 among the land records of said District in Liber 4366, at folio 115. That defendant Catherine D. McGrew, at the request of defendant John L. McGrew, on, to wit, February 10, 1921, executed a deed of trust to Edward W. Whitside and Harvey T. Winfield, Trustees of the Home Building Association of said District, to secure Richard E. Claughton, Treasurer of said Association, \$6,000, said deed of trust being dated February 10, 1921 and recorded among the land records of said District on February 14, 1921, in Liber 4500, at folio 69. That the aforesaid deeds of trust were released as follows:

To wit, between April 30, 1920 and February 28, 1921, the \$4,000 secured by deed of trust in Liber 4037, at folio 341, was paid by defendant Catherine D. McGrew, together with interest thereon, out of money which plaintiff alleges was in its entirety the property of the defendant John L. McGrew, and, to wit, on February 28, 1921, the said deed of trust was duly released by instrument dated as of the last named date, and recorded among the land records of said District on March 7, 1921 in Liber 4472, at folio 184.

To wit, between May 1, 1920 and February 25, 1921, the \$2,000 secured by deed of trust in Liber 4366, at folio 115, was paid by defendant Catherine D. McGrew, together with interest thereon, out of money which plaintiff alleges was also the property in its entirety of defendant John L. McGrew, and, to wit, on February 25, 1921, the said deed of trust was duly released by instrument bearing said last named date, and recorded among the land records of said District on February 26, 1921 in Liber 4477, at folio 349.

To wit between February 10, 1921 and January 16, 1926, the \$6,000 secured by deed of trust in Liber 4500, at folio 69, was paid by defendant Catherine D. McGrew, together with interest thereon, out of money which plaintiff alleges

was in its entirety also the property of defendant John L. McGrew, and to wit, on January 16, 1926. the said deed of trust was duly released by instrument bearing said last named date, and received for record on January 21, 1926, in the Office of the Recorder of Deeds of said District.

12 (23) Plaintiff further alleges that defendant John L. McGrew, still conspiring with defendant Catherine D. McGrew to conceal his assets and property with intent to defraud plaintiff, on, to wit, March 31, 1920, while plaintiff's suit as aforesaid was pending against him, rented, by and in the name of defendant Catherine D. McGrew, a safety deposit box of the American Security and Trust Company of Washington, D. C., said box being No. 6823 in the vaults of said Company, and the said defendant Catherine D. McGrew, at the request of defendant John L. McGrew, on said date, entered into a written contract with said company, in her name, for the rental of said box, which said contract expressly gave to defendant John L. McGrew access to said box and control over its contents. That the said safety deposit box is still rented in the name of defendant Catherine D. McGrew, and that defendant John L. McGrew, under and pursuant to said contract, is still authorized to have access to and control over the contents of said box.

Plaintiff is informed and believes, and therefore avers, that the said box contains moneys, stocks, bonds, notes, mortgages, and other securities and evidences of indebtedness and things of value, which plaintiff alleges are the property of defendant John L. McGrew and were purchased by and in the name of defendant Catherine D. McGrew, and otherwise acquired, and were and are received and held by and in the name of defendant Catherine D. McGrew for the express purpose of defrauding plaintiff and preventing plaintiff enforcing the liability incurred by defendant John L. McGrew as aforesaid.

(24) Plaintiff alleges further that defendant John L. McGrew, still confederating and conspiring with defendant Catherine D. McGrew to conceal his assets and property from his creditors, on, to wit, November 14,
13 1922, purchased from Stanley Horner, Washington, D. C., at a price of \$1,415.28, and by and in the name

of defendant Catherine D. McGrew, a new Buick sedan automobile, Model 1923, No. 23-38, Manufacturer's No. 904447, Motor No. 927459, which said automobile was conveyed to said Catherine D. McGrew by conditional bill of sale dated November 14, 1922, recorded on January 8, 1923, in Liber 4802, at folio 469, in the office of the Recorder of Deeds of said District. That at the request of defendant John L. McGrew, in payment of said purchase price there was delivered by defendant Catherine D. McGrew to said Stanley Horner, on, to wit, November 14, 1922, \$1,008.00 in cash, all of which plaintiff alleges was the exclusive property of defendant John L. McGrew, and eight notes for \$50.91 each and interest, executed by defendant Catherine D. McGrew at the request of defendant John L. McGrew. That said notes with interest, to wit, subsequent to November 14, 1922, were paid in cash, all of which amounts in their entirety plaintiff alleges were the property of defendant John L. McGrew. And plaintiff alleges that said automobile, which bears District of Columbia license No. 2694 for the year 1926, was purchased as aforesaid by and in the name of defendant Catherine D. McGrew, and is now held in the name of the said defendant, for the express purpose of defrauding plaintiff and preventing her enforcing payment of said judgment.

(25) Defendant John L. McGrew is an employe of the United States Government in the Bureau of Internal Revenue, and plaintiff is informed and believes, and therefore avers, that the said defendant, during the year 1921, received a salary of \$4,000 a year, and has at all times since 1921 received not less than that salary annually, and now receives, and for some years last past has received, a salary of \$4,800 a year, paid to him in semi-monthly payments of \$200 each; that as a result of said employment

14 said defendant has received from 1921 to the time of filing this Bill, an amount in excess of \$20,000.

And plaintiff alleges that the said defendant, still conspiring with defendant Catherine D. McGrew to conceal his assets and property with intent to defraud plaintiff, has transferred all of his moneys, salary, income and assets, upon receipt of same, to defendant Catherine D. McGrew, and so continues to do, for the express purpose of render-

ing himself insolvent, and to prevent plaintiff enforcing payment of the aforesaid judgment.

(26) Plaintiff alleges that through and by means of the combination and conspiracy aforesaid of defendants so as aforesaid conceived and formed by them, and hitherto and now continuing, plaintiff is hindered, delayed and defrauded in respect of collecting her judgment aforesaid, and she has, after diligent search and inquiry, been unable to discover any property of any kind in the District of Columbia, or elsewhere, owned by defendant John L. McGrew in his own name out of which the aforesaid judgment could be collected, or any property other than the aforesaid premises No. 3168 Eighteenth Street, N. W., the aforesaid personal property in the aforesaid safe deposit box, and the aforesaid automobile all conveyed and transferred to defendant Catherine D. McGrew, but in fact the property of defendant John L. McGrew, as hereinbefore set out. And plaintiff avers, upon advice of counsel, that upon the execution issuing as aforesaid upon the said judgment and its return by the United States Marshal "nulla bona," she thereby obtained a lien upon the real and personal estate of the defendant John L. McGrew, and that in law and in equity she has a lien upon the aforesaid property.

(27) Plaintiff is advised by counsel, and upon such advice avers, that pending the determination of this cause it is necessary, in order that the status quo may be maintained, that a Receiver be appointed for the aforesaid property, and inasmuch as defendants are in occupation
15 and possession of premises No. 3168 Eighteenth Street, N. W., and further inasmuch as taxes and insurance must be promptly paid, plaintiff avers that unless a Receiver is appointed to collect from defendant John L. McGrew reasonable rent for the use and occupation of the said property and apply the same to the aforesaid obligations, her aforesaid judgment will be seriously endangered thereby.

(28) Plaintiff further avers, on advice of counsel, that owing to the fact that defendant John L. McGrew is an employe of the United States Government, his salary cannot be reached through the ordinary processes of law, and unless a Receiver is appointed as aforesaid, to whom the said defendant shall be required by order of this Court to

pay over his salary monthly in excess of \$100, as received, plaintiff will be without remedy to reach the salary of said defendant, so transferred as aforesaid to defendant Catherine D. McGrew, and her judgment will be seriously endangered thereby.

(29) Plaintiff is advised by counsel, and upon such advice avers, that she is entitled to have the legal title to premises No. 3168 Eighteenth Street, N. W.; to the said automobile; and to the personal property in the aforesaid safety deposit box, declared to be held in trust by defendant Catherine D. McGrew for the benefit of defendant John L. McGrew, and to have the aforesaid real and personal property sold by a Trustee or Trustees to be appointed in this cause, for the purpose of satisfying the aforesaid judgment and the costs of this proceeding, and counsel's fees.

(30) Plaintiff is without any complete and adequate remedy at law.

16 Wherefore, the premises considered, plaintiff prays:

First. That a rule to show cause be granted against the defendants John L. McGrew and Catherine D. McGrew requiring each of them to show cause, if any they have, why a receiver should not be appointed pendente lite for the property described in paragraph 26 of this bill, and to collect from the defendant John L. McGrew monthly his salary in excess of \$100, to wit, \$300 a month, as the same is received by him.

Second. That a receiver of the property described in paragraph 26 of this bill, and to collect monthly from defendant John L. McGrew his salary in excess of \$100, to wit, \$300 a month, as the same is received by him, be appointed pendente lite.

Third. That defendant Catherine D. McGrew be held to be a trustee under deed from Edmund Joseph Brennan and wife to said Catherine D. McGrew, dated April 30, 1920 and recorded among the land records of the said District on May 3, 1920 in Liber 4366, at folio 114, holding the legal title to premises No. 3168 Eighteenth Street, N. W., in trust for the benefit of defendant John L. McGrew.

Fourth. That defendant Catherine D. McGrew be held to be a trustee under the sale to her by Stanley Horner, on

November 14, 1922, of a Buick sedan automobile, Model 1923, No. 23-38, Manufacturer's No. 904447, Motor No. 927459, holding the legal title to said car in trust for the benefit of defendant John L. McGrew.

Fifth. That defendant Catherine D. McGrew be held to be a trustee of the moneys, stocks, bonds, notes, mortgages and other securities and evidences of indebtedness, and things of value, now in Safety Deposit Box No. 6823 in the vaults of the American Security and Trust Company of Washington, D. C., holding the legal title to the
17 said personal property in trust for the benefit of defendant John L. McGrew.

Sixth. That the interest of defendant John L. McGrew in the aforesaid real and personal property herein particularly described, be sold by a Trustee or Trustees to be appointed by the Court, and the proceeds thereof, and the hereinbefore described funds to be collected by a Receiver, applied to the payment and satisfaction of the costs of this proceeding, counsel's fees, and the judgment referred to and described in the bill, and that pending the sale of the said property, the receivership of the said property be continued and until such further time as may be necessary to carry out the purposes of this bill.

Seventh. That defendant John L. McGrew be required, by process of this Court, to pay to a Receiver to be appointed by this Court, his monthly salary in excess of \$100, as received by him, to wit, \$300 a month as the same is received by him.

Eighth. That she may have such other and further relief, both general and special, as the nature of her case may require, and to equity seems meet and proper, to which end she prays for process of subpoena against the defendants who are the persons named as such in the caption of this bill, which is made a part hereof, requiring them to appear and answer the exigencies thereof.

OLIVE S. MCGREW.

OLIVE B. LACY,
Attorney for Plaintiff.

DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the foregoing Bill by me subscribed and know the contents thereof; that the

facts therein stated as of my own personal knowledge are true and those stated as upon information and belief I verily believe to be true.

OLIVE S. McGREW.

18 Subscribed and sworn to before me this second day of November, A. D. 1926.

[NOTARIAL SEAL.]

GRACE SHROPSHIRE,

Notary Public, D. C.

My commission expires Oct. 9, 1927.

19 Filed Nov. 3, 1926.

[Short Copy of Costs.]

Clerk's Office, Supreme Court of the District of Columbia.

At Law.

No. 65117.

OLIVE S. McGREW, Plaintiff,

vs.

JOHN L. McGREW, Defendant.

1921, March 30 Judgment for plaintiff for \$7,629.75

with interest on 240.00 from Febry 15, 1918.

“ “ on 240.00 “ Aug 15, 1918.

“ “ on 7149.75 “ Febry 15, 1919.

Cost of Protest

Costs of Suit 46.50

“ add'l to Satisfy 40

Less credit of \$— paid

1923, Jany 2, Fi. Fa., issued.

“ “ returned Nulla bona.

\$— of said costs due Clerk.

Test:

[SEAL.]

FRANK E. CUNNINGHAM,

Clerk,

By CHAS. B. COFLIN,

Ass't Clerk.

Oct. 28, 1926.

20 *Joint and Several Answer of John L. McGrew and
Catherine D. McGrew.*

Filed Nov. 19, 1926.

* * * * * * *

These defendants, jointly and severally, reserving to themselves and each of them, all, and all manner of benefit by way of exception or otherwise, to the many errors, uncertainties and insufficiencies in said Bill of Complaint contained, and expressly reserving the same as though they had moved to dismiss said bill, for answer thereto, or to so much thereof as they are advised it is necessary or material for them to make answer unto, answering say:

1. They admit the averments of paragraph 1 of said bill.
2. They admit the averments of paragraph 2 of said bill.
- 3, 4, and 5. For the purposes of this case they admit the averments of paragraphs 3, 4 and 5 of said bill.

6. Answering paragraph six of said bill these defendants say that the notes therein referred to are the notes upon which the said plaintiff obtained judgment against the said defendant John L. McGrew, as set forth in paragraph 3 of said bill, and said notes were secured by deed of trust on the said lands in Fauquier County, Virginia, referred to in said 6th paragraph, and that the defendant John L. McGrew at that time believed himself to be solvent because the security for the payment of said notes was deemed to be ample and sufficient.

7. Answering the 7th paragraph of said bill these defendants say that on to-wit the 15th day of January, 1923, the said plaintiff filed against these defendants in this court a certain bill in equity, No. 41,397, wherein it
20½ was alleged, inter alia, that the said defendant Catherine D. McGrew was the holder of record of a certain interest in and to Lot numbered 191 in Charlotte Dailey's Subdivision of parts of Mt. Pleasant and Pleasant Plains, as recorded in Liber County No. 20, folio 28 in the Office of the Surveyor of the District of Columbia, the said land and premises being otherwise known as No. 1680 Irving Street, N. W. in the City of Washington, in said District, and Lot No. 58 in Harry T. Jones Subdivision of

Ingleside, Block 18, in Walbridge's Subdivision of Ingleside, as per plat of Jones Subdivision, Liber County No. 20, folio 74, in the Office of the Surveyor of the District of Columbia, the said land and premises being otherwise known as No. 3168 18th Street, N. W., in the City of Washington, and that said defendant Catherine D. McGrew held and had whatever interest she may have, appear to have or claim in the said pieces or parcels of land and premises, and each of them, for the benefit of the defendant John L. McGrew, who is in equity the real owner thereof; and that the said interests and each of them were in equity subject to be sold and the proceeds thereof applied to the payment and satisfaction of the judgment held by said plaintiff against the defendant John L. McGrew.

That these defendants filed their answers to said bill, wherein it was alleged, among other things, that the said John L. McGrew had no interest whatever in said parcels of land, or either of them; admitted that the defendant Catherine D. McGrew was the owner of record of said property 3168 18th Street, N. W., subject to an indebtedness of approximately \$3,600, secured by deed of trust thereon, and asserted her ownership thereof; and denied that she was the owner of record of premises 1680 Irving Street, Northwest.

Thereafter, on, to-wit the 12th day of November, 1924, the said cause came on for final hearing and at said
21 hearing the said plaintiff offered testimony respecting all of the transactions referred to in the bill of complaint herein, seeking to establish the fact that the said hereinbefore referred to pieces and parcels of land were the property of the said John L. McGrew. Thereafter, on, to-wit, the 12th day of November, 1924, there was passed in said cause a decree dismissing said bill of complaint, with costs. From said decree the said plaintiff noted and prosecuted an appeal to the Court of Appeals of this District, and upon a hearing of said cause in the Court of Appeals the said decree dismissing said bill of complaint was affirmed. These defendants in further answer to said bill say that the said matters and things set forth in said bill, in so far as they relate to the said pieces or parcels of real estate sought by said bill to be subjected to the payment of said judgment are res adjudicata.

8. For the purposes of this case they admit the averments of paragraph 8 of said bill.

9. For answer to the 9th paragraph of said bill these defendants deny that, on to-wit the 3d day of January, 1917, or at any other time, they entered into any conspiracy whatsoever for the purposes as set forth in said paragraph. They have no knowledge of what exhaustive or prolonged search and inquiry was or has been made by the said plaintiff to find any assets or property of the defendant John L. McGrew, which could be levied upon to satisfy the aforesaid judgment, or what difficulty, if any, was attendant thereon, but they state in further answer to said paragraph that all of the matters and things set forth in said bill of complaint were matters of record and at all times readily accessible to the said plaintiff had she sought to make any inquiry with respect thereto.

10. For the purposes of this case they admit the averments of paragraph 10 of said bill.

11. Answering the 11th paragraph of said bill, 22 these defendants say they admit that on January 3, 1917, on which day it is alleged in the 9th paragraph of said bill these defendants entered into the conspiracy therein set forth, they became husband and wife. They deny, however, that at the time of said marriage the defendant Catherine D. McGrew had no separate estate.

12. For the purposes of this case they admit the averments of paragraph 12 of said bill. Further answering said paragraph these defendants say that said exchange was made subject to the deed of trust on said lands in Fauquier County, Va., securing the payment of said notes held by said plaintiff.

13. For the purposes of this case they admit the averments of paragraph 13 of said bill, except the allegation therein contained that the conveyance therein referred to was made for the express purpose of defrauding plaintiff and preventing her enforcing payment of the aforesaid indebtedness, which averment they deny. They deny that said Lee Brown held title to said property for the sole benefit of said John L. McGrew. Further answering said paragraph, these defendants say that at the time the aforesaid exchange of properties was made there was not any default, either as to principal or interest, on the part of

the defendant John L. McGrew, respecting the notes held by said plaintiff.

14. For the purposes of this case they admit the conveyances of property referred to in the 14th paragraph of said bill, but they deny that said conveyances were without valid consideration and they deny that they were made for the express purpose of defrauding plaintiff and preventing her enforcing any liability on the part of the defendant John L. McGrew, respecting the aforesaid notes.

15. For the purposes of this case they admit the averments of paragraph 15 of said bill.

23 16. They deny the averments of paragraph 16 of said bill.

17. They admit the conveyances referred to in paragraph 17 of said bill, but they deny each and every of the other averments therein contained.

18. For the purposes of this case they admit the averments of paragraph 18 of said bill.

19. They admit the release referred to in paragraph 19 of said bill, but they deny each and every of the other allegations in said paragraph contained.

20. For the purposes of this case they admit the conveyances referred to in paragraph 20 of said bill, but they deny that the defendant John L. McGrew joined in the conveyance to said Forbes, and they deny each and every of the other averments in said paragraph.

21. They deny each and every of the averments of paragraph 21 of said bill.

22. They deny each and every of the averments of paragraph 22 of said bill.

23. They deny each and every of the averments of paragraph 23 of said bill. Further answering said paragraph these defendants say that the said Catherine D. McGrew, in her own right and in her own behalf, rented said safe deposit box as and for her own, and that under arrangement with the said American Security & Trust Company she designated the defendant John L. McGrew as deputy to have access to said box, until such authority be revoked by her by notice in writing to said Company. Further answering said paragraph, these defendants say that heretofore, to-wit, on the 8th day of February, 1923, the said

plaintiff in said suit at law, No. 65,117, caused to be issued certain writs of attachment upon the judgment entered in said cause directed to the United States Marshal for said District, commanding him to attach the goods, chattels and credits of the defendant John L. McGrew and that the property and credits of said defendant John L. McGrew were sought to be reached in the hands of the said American Security & Trust Company by serving a copy of said writ of attachment upon said Trust Company, all of which will more fully appear by reference to said attachment proceedings in said suit at law, which are hereby referred to and made a part of this answer, and which said attachment is still in full force and effect.

24. They deny each and every of the allegations of paragraph 24 of said bill.

25. For the purposes of this case they admit the averments of paragraph 25 in so far as they relate to the employment of the defendant John L. McGrew by the United States Government and the salary by him as such employee, but they deny each and every of the other allegations in said paragraph contained.

26. They deny each and every of the averments of paragraph 26 of said bill.

27. Answer the 27th paragraph of said bill these defendants admit that they occupy premises No. 3168 18th Street as their home. They say, however, that the taxes and insurance are promptly paid by the defendant Catherine D. McGrew, the owner of said property. They deny each and every of the other averments of said paragraph.

28. They admit that the salary of the said John L. McGrew is not subject to attachment or other process in the hands of the United States, but they deny the power of this court to require the defendant to pay over the amount of his salary in excess of \$100, or the jurisdiction of this court to deal in this proceeding in any manner with the salary of said defendant.

29. They deny each and every of the averments of paragraph 29 of said bill.

30. They deny the averments of paragraph 30 of said bill.

31. Further answering said bill of complaint these defendants say that heretofore, to-wit, on the 15th day of

January, 1923, the said plaintiff filed in this court against these defendants a certain bill in equity numbered 41,397, wherein she set up, among other things, the fact that she was the holder of the judgment against the defendant John L. McGrew referred to in the bill of complaint herein, and wherein she claimed that the said Catherine D. McGrew was the holder of record of the legal title to Lot No. 191 in Charlotte Dailey's Subdivision of parts of Mt. Pleasant and Pleasant Plains as recorded in Liber County No. 20, folio 28, in the office of the Surveyor of the District of Columbia, being otherwise known as premises No. 1680 Irving Street, N. W., in the City of Washington, in said District, and Lot No. 58 in Harry T. Jones Subdivision of Ingleside, Block 18, in Walbridge's Subdivision of Ingleside, as per plat in Jones Subdivision, Liber County No. 20, folio 74, in the office of the Surveyor of said District, being otherwise known as premises No. 3168 18th Street, N. W., in the City of Washington, and that although the holder of record of said property the said Catherine D. McGrew was in fact not the owner of said property but the same belonged to the defendant John L. McGrew, who was the real owner thereof. That in and by said bill in equity the said plaintiff sought to have it determined that the said John L. McGrew was in law the owner of said properties and to have the same decreed to be subject to the payment and satisfaction of said judgment held by said plaintiff, and that in that behalf and to that end the same, and each of them, be sold and the proceeds thereof applied accordingly. That thereafter in said cause the said defendants answered said bill denying that said John L. McGrew had any interest whatever in and to said pieces or parcels of land; and that the said Catherine D. McGrew was the owner of record of premises 1680 Irving Street, N. W.; but admitting that she was the owner of record of said property 3168 18th Street, N. W., subject to an indebtedness of approximately \$3,600, secured by deed of trust thereon, and asserting her sole and exclusive ownership thereof. Thereafter the said cause came on for final hearing, and on, to-wit, the 12th day of November, 1924, a decree was passed in said cause dismissing said bill. From said decree the said plaintiff noted and prosecuted an appeal to the Court of Appeals of this District and upon a

hearing in said court the said decree dismissing said bill was affirmed. All of which will more fully and at large appear by reference to said equity proceedings in said cause No. 41397, which are hereby referred to and made a part of this answer. And these defendants say they are advised by counsel that the matters and things contained in the bill of complaint herein, in so far as they relate to said pieces or parcels of land are res adjudicata.

Further these defendants are advised, and therefore aver, that any cause of action which the said plaintiff may have by reason of the conspiracy alleged to have been entered into by and between these defendants on the 3d day of January, 1917, did not accrue within three years next preceding the filing of the bill in this cause, and is, therefore, barred by the Statute of Limitations.

27 Further answering said bill these defendants say they are advised by counsel that said bill on its face shows that said plaintiff has been guilty of such gross laches, unexplained in said bill, as to disentitle her to any relief sought in and by her said bill of complaint herein.

Further answering said bill these defendants are advised by counsel that the said plaintiff, in so far as the matters and things set forth in said bill of complaint are concerned, has a full, complete and adequate remedy at law.

And having fully answered these defendants pray that the Rule to Show Cause heretofore issued herein be dismissed and that the said bill of complaint be dismissed.

JOHN L. MCGREW.

CATHERINE D. MCGREW.

MINOR, GATLEY & ROWLAND,
By ARTHUR P. DRURY,
Attorneys for Defendants.

DISTRICT OF COLUMBIA, ss:

John L. McGrew and Catherine D. McGrew, being first duly sworn according to law, upon oath depose and say: We have read the foregoing and annexed answer by us subscribed and know the contents thereof; the matters and things therein stated as of our personal knowledge are true

and those stated upon information and belief we believe to be true.

JOHN L. MCGREW.

CATHERINE D. MCGREW.

Subscribed and sworn to before me this 18th day of November, 1926.

[NOTARIAL SEAL.]

NEENAH LAUB,
Notary Public, D. C.

28

Decree.

Filed Apr. 20, 1928.

* * * * *

This cause came on for hearing in open Court, in the October Term, and after due consideration thereof and the testimony adduced, it is, by the Court, this 20 day of April, A. D. 1928, adjudged, ordered and decreed, as follows:

First. That, as a finding of fact, the defendant Catherine D. McGrew, be, and she hereby is, declared to be a Trustee of the contents of Safety Deposit Box No. 6823 in the vaults of the American Security and Trust Company of Washington, D. C., and to hold the legal title to the contents of the said box in trust for the benefit of the defendant John L. McGrew, as his interest in the contents of said box may appear; and the said defendant John L. McGrew is hereby declared to be the equitable owner of any and all of the contents of said box so as aforesaid held by the defendant Catherine D. McGrew, and his equitable interest therein, as the same may appear, is hereby declared to be subject to the lien of the plaintiff's judgment, described in the plaintiff's Bill of Complaint herein.

Second. That, as a finding of fact, the defendant Catherine D. McGrew be, and she hereby is, declared to be a Trustee under the sale to her by Stanley Horner, on November 14, 1922, of a Buick Sedan automobile, Model 1923, No. 23-38, Manufacturer's No. 904447, Motor No. 927459, and to hold the legal title to the said automobile in trust for the benefit of the defendant John L. McGrew; and the said defendant John L. McGrew is hereby declared to be

the equitable owner of the said automobile, and his equitable interest therein is hereby declared to be subject
29 to the lien of the plaintiff's said judgment.

Third. That, as a finding of fact, the defendant Catherine D. McGrew, be, and hereby is, declared to be a Trustee under the deed from Edmund Joseph Brennan and wife, dated April 30, 1920, and recorded among the land records of the District of Columbia on May 3, 1920, in Liber 4366, at folio 114, conveying to her the property known as premises No. 3168 Eighteenth Street, Northwest, in said District, and to hold the legal title to said property in trust for the benefit of the defendant John L. McGrew, and the defendant John L. McGrew is hereby declared to be the equitable owner of said property; but the relief prayed for in said Bill of Complaint, as to this property, is denied on the ground that the question presented has been already litigated between the parties to this cause and is *res judicata*.

Fourth. That the defendant John L. McGrew be, and he hereby is, directed and required to pay and deliver to the Receiver hereinafter named and appointed, each and every month, until the further order of this Court, the salary received by him as an employe of the United States Government, whatever it may be, in excess of One Hundred Dollars (\$100.00), each month, when and as said salary is received by him.

Fifth. That Olive B. Lacy is hereby appointed Receiver in this cause, with full power and authority to demand, collect and receive from the defendant John L. McGrew, each and every month, until the further order of this Court, the salary received by him as an employe of the United States Government, whatever it may be, in excess of One Hundred Dollars (\$100.00) each month, when and as said salary is received by the said John L. McGrew; that the
30 said Receiver is hereby authorized and empowered to open the safety deposit box hereinbefore described, in the vaults of said American Security and Trust Company, and is hereby directed to report the contents thereof to the Court, with authority to ask for leave to sell any or all of the contents of said box standing in the name

of either of the said defendants, or otherwise held by the defendant Catherine D. McGrew for the benefit of the defendant John L. McGrew, and to apply the proceeds of such sale as hereinafter provided; that the said Receiver is also hereby authorized and empowered to take over and sell the automobile hereinbefore described, and to apply the proceeds of such sale as hereinafter provided; and the said defendants are hereby directed and required to turn over to the said Receiver the aforesaid automobile, forthwith. That all funds coming into the hands of the said Receiver are hereby ordered to be applied toward the satisfaction of the aforesaid judgment, at law No. 65117, until said judgment shall be fully paid, together with the taxed costs of this cause, which are hereby assessed against the defendant John L. McGrew; the said Olive B. Lacy to give an undertaking in the penalty of One Thousand Dollars, (\$1,000), with surety to be approved by the Court, conditioned for the faithful performance of her duties as such receiver.

By the Court:

WILLIAM HITZ,
Justice.

Appeal noted in open court this 20th day of April 1928.
Cost bond fixed at \$100—supersedeas bond—\$5,000.

W. H.

Cross appeal noted by plaintiff as to the decree affecting the real estate mentioned in the bill.

W. H.

31

Memoranda.

April 25, 1928.—Undertaking on appeal (defendants) \$5,000 approved and filed.

May 9, 1928.—Defendants' statement of evidence and notice filed.

Assignments of Error.

Filed May 9, 1928.

* * * * *

1. The Court erred in declaring the defendant Catherine D. McGrew to be trustee of the contents of the safety de-

posit box No. 6823 in the American Security and Trust Company.

2. The Court erred in declaring that the defendant Catherine D. McGrew holds the legal title to the contents of said box in trust for the defendant John L. McGrew.

3. The Court erred in holding the defendant John L. McGrew to be the equitable owner of the contents of said box and declaring the same to be subject to the lien of the plaintiff's judgment.

4. The Court erred in not holding that plaintiff had a complete and adequate remedy at law with respect to said box and contents.

5. The Court erred in holding that the defendant Catherine D. McGrew is a trustee under the sale to her by Stanley Horner, Inc., of the automobile described in the bill of complaint, and that she holds legal title thereto in trust for the benefit of the defendant John L. McGrew; and in holding that the defendant John L. McGrew is the equitable owner of said automobile, and declaring such equitable interest therein subject to the lien of plaintiff's judgment.

6. The Court erred in holding that the defendant Catherine D. McGrew holds title to the premises 3168 Eighteenth Street, Northwest, as trustee for the benefit of the defendant John L. McGrew, and that he is the equitable owner thereof.

7. The Court erred in directing and requiring the defendant John L. McGrew to pay over to a Receiver each and every month until the further order of this Court, the salary received by him as an employee of the United States Government, in excess of One Hundred Dollars (\$100.00) each month, when and as received by him.

8. The Court erred in appointing a Receiver and in conferring upon said Receiver the powers and authority sought to be conferred in and by its decree.

9. The Court erred in not dismissing plaintiff's bill.

MINOR, GATLEY & DRURY,
Attorneys for Defendants.

Received copy of the above Assignments of Error this 8 day of May, 1928.

OLIVE B. LACY,
Attorney for Plaintiff.

Designation of Record.

Filed May 9, 1928.

* * * * *

The Clerk will prepare transcript of the record on appeal in the above entitled cause, and include therein the following:

1. Bill of Complaint and Exhibits.
2. Answers of Defendants.
- 33 3. Final Decree of April 20, 1928.
4. Memorandum Bond on Appeal, approved and filed.
5. Assignments of Error.
6. This Designation.

MINOR, GATLEY & DRURY,
Attorneys for Defendants.

Received copy of the above Designation this 8 day of May, 1928.

OLIVE B. LACY,
Attorney for Plaintiff.

Memorandum.

June 27, 1928.—Defendants' Statement of Evidence signed and filed.

34 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 33, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 46273 in Equity, wherein Olive S. McGrew is Plaintiff and John L. McGrew and Catherine D. McGrew are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 6th day of August, 1928.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

Filed June 27, 1928.

35 In the Supreme Court of the District of Columbia.

Equity. No. 46,273.

OLIVE S. MCGREW, Plaintiff,

vs.

JOHN L. MCGREW and CATHERINE D. MCGREW, Defendants.

Statement of Evidence.

Be it remembered that on the 2nd day of November, 1927, this cause came on for trial before Mr. Justice William Hitz, and thereupon the following proceedings were had:

Max Shock, a witness called on behalf of the plaintiff, testified that he has been in the employ of Julius Garfinckle & Company for fourteen years, and is in charge of their fur working department; that Catherine Dalton, of Cherrydale, Virginia, was employed by that Company in his department to do fur finishing work; that she was employed by the Company from some time in 1913 until she left in 1915 or 1916, and also employed there in 1917, and received a salary of between Twelve and Thirteen Dollars a week.

Thereupon the plaintiff offered in evidence the pleadings in this cause.

Olive S. McGrew, the plaintiff, being sworn in her own behalf, testified as follows: She was the former wife of the defendant, John L. McGrew, and was such until about the middle of April, 1916. The judgment sought to be enforced in this cause was based upon certain notes given to
36 her by the defendant, John L. McGrew, on February

15, 1916; that there was a principal note of \$8,000, to run three years, ten notes of \$50 each to be paid monthly, and six interest notes of \$240 each, to be paid semi-annually. That at the time the said notes were given to her, the defendant John L. McGrew owned 870 acres of land in Fauquier County, Virginia, and he was also the equitable owner of a house and lot, 1855 Newton Street, Northwest, in the District. The notes were secured by a second deed of trust on the Virginia property. The inducement leading plaintiff to accept such second trust was that the defendant, John L. McGrew, owned this valuable property and had a good salary besides, and she felt safe in taking a second trust. The amount of the first deed of trust was only \$2,400. He gave her the notes on settlement of property, and after he was married again, he put all of his property in his present wife's name and didn't pay plaintiff what he owed her.

And thereupon counsel for plaintiff directed the attention of the Court to the admission of the defendants, in the tenth paragraph of their Answer to plaintiff's Bill, that defendant John L. McGrew, through, and in the name of, one Lee Brown, exchanged the Newton Street property for premises No. 1680 Irving Street, N. W.; and, in the twelfth paragraph of their said Answer, that he exchanged the Virginia land for property No. 707 Twentieth Street, N. W., both in the District. Plaintiff then testified she first learned of the exchange of the Newton Street property for the Irving Street property in 1916, and she didn't learn of the exchange of the Virginia property until he failed in his third interest note in August, 1917. That in the meantime he had married the co-defendant in January, 1917.

Thereupon, over the objection and exception of the defendants, a certified copy of a deed dated May 26, 1917, and recorded the same day in Liber 3984, at folio 175, among the land records of the District of Columbia, from John L. McGrew and Catherine D. McGrew, defendants herein, conveying title to premises 707 Twentieth Street, N. W., to Lee Brown, was offered in evidence; the said deed bearing no revenue stamps. Over the objection and exception of the defendants, there was offered in evidence a certified copy of a deed bearing date May 26, 1917, and recorded May 28, 1917, in Liber 3993, at folio 10, among

the land records aforesaid, by Lee Brown, conveying the same property to defendant Catherine D. McGrew; the said deed bearing no revenue stamps. Over the objection and exception of the defendants, there was offered in evidence a certified copy of a deed dated May 26, 1917, and recorded the same day in Liber 3984, at folio 174, among the land records aforesaid, from Lee Brown, conveying premises 1680 Irving Street, N. W., to defendant Catherine D. McGrew; the said deed bearing no revenue stamps.

Thereupon counsel for plaintiff asked the Court to take judicial notice of the Acts of Congress from October, 1914, through 1924, providing, in substantially the same language, for revenue stamps on deeds, or other instruments whereby lands, tenements, or other realty shall be sold, assigned, transferred or otherwise conveyed to, or vested in the purchaser or purchasers, or any other person by his, her or their direction, as follows: “* * * when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds \$100 and does not exceed \$500, fifty cents, and for each additional \$500 or fractional part thereof, fifty cents.” Plaintiff then testified that prior to the time of these conveyances, all payments on the notes had been made regularly. That she didn't know of the

transfers of these two properties to the co-defendant
38 at the time default was made in payment of the interest note. After default in the payment of the notes, she started foreclosure proceedings, but the owner of the first trust had already started such proceedings, and after the first trust was paid, \$2,400, and the cost of sale, all she got out of it was \$1,090.25. After that Mr. McGrew paid nothing further on the notes. That she first learned Mr. McGrew had transferred the title to this property to the co-defendant sometime in 1917, after he defaulted in his interest note. That at first she was very much worried, but when she inquired of him about it, he admitted doing it, but claimed there was nothing to worry about; that she knew nothing about the consideration that had passed for the property at the time. That her principal note matured February 15, 1919, and was not paid. Over the objection and exception of the defendants, there was offered in evidence a certified copy of a deed from Catherine D. Mc-

Grew and John L. McGrew, defendants herein, dated January 24, 1919, and recorded January 30, 1919, in Liber 4139, at folio 437, among the land records aforesaid, conveying the premises 707 Twentieth Street, N. W., to Frederick L. Payne and wife, the said deed bearing Six Dollars in revenue stamps.

Plaintiff testified she did not learn of the sale of the Twentieth Street property until sometime in 1919 after his default in the principal note. That after he failed to pay this note she filed suit on February 28, 1919.

Over the objection and exception of the defendants, there was offered in evidence a certified copy of a deed dated April 1, 1920, and recorded April 7, 1920 in Liber 4354, at folio 21, among the land records aforesaid, from defendant Catherine D. McGrew to Georgella Forbes, conveying property 1680 Irving Street, N. W.; said deed bearing \$7.50 in revenue stamps. Under the same objection and exception, there was offered in evidence a certified copy of a deed of trust, dated and recorded on the above said dates, in Liber 4354, at folio 22, among the land records aforesaid, executed by Georgella Forbes to Claud Livingston and Arthur C. Israel, Trustees, to secure the balance of the purchase money of the said property, amounting to Five Thousand Five Hundred Dollars (\$5,500.00). There was also offered in evidence a certified copy of a release of the said \$5,500 deed of trust, executed by the above named Trustees to Georgella Forbes, dated June 24, 1924 and recorded July 2, 1924, among the land records aforesaid in Liber 5278, at folio 168. Over the objection and exception of the defendants, there was offered in evidence a certified copy of a deed dated April 30, 1920, and recorded on May 3, 1920, among the land records aforesaid, in Liber 4366, at folio 114, from Edmund Joseph Brennan and wife to defendant, Catherine D. McGrew, conveying property 3168 Eighteenth Street, N. W., subject to a trust of Four Thousand Dollars (\$4,000.00), said deed bearing \$5.50 in revenue stamps. There was also offered in evidence a certified copy of the said \$4,000 deed of trust by Henry C. Finkel to B. Francis Saul and J. Wriley Jacobs, Trustees, dated January 22, 1918 and recorded on January 24, 1918, among the land records aforesaid, in Liber 4037, at folio 431. There was also offered in evidence a certified copy of a deed of

trust for \$2,000.00, on the said property, dated May 1, 1920 and recorded May 3, 1920, among the land records aforesaid, in Liber 4366, at folio 115, executed by defendant Catherine D. McGrew to William S. Phillips and James H. Holmes, Trustees, to secure the balance of the purchase money. The plaintiff then testified that she did not learn of the sale of the Irving Street property until early in 1923. That she learned of the purchase of the Eighteenth Street property sometime in 1920, as she recalled it was during the time that her suit for judgment was pending on the notes. That at the time she heard of these sales of property and the purchase of the Eighteenth Street property, she believed, from the representations of the defendant John L. McGrew, that the co-defendant had a separate estate. That after the return of nulla bona on the execution, she filed a judgment creditor's bill to reach the assets of defendant John L. McGrew. That because of Mr. McGrew's representations when he made those transfers, she did not know, until they refused to answer the interrogatories filed in her judgment creditor's suit, in November, 1923, that there was anything curious about it. That she learned of the sale of the Irving Street property through the affidavit the defendants filed in answer to her judgment creditor's bill. The witness further testified that subsequent to the filing of her judgment creditor's bill various garnishments were issued under her judgment to find whether the defendant John L. McGrew had any assets. Over the objection and exception of the defendants that it was immaterial and irrelevant, plaintiff testified that when the defendants refused to answer her interrogatories in the other case in 1923, and show what they had done with his assets, on the ground that they would be testifying against each other, she, of course, knew that they had resorted to fraud and did not dare to come before the court and tell the truth. That that came to her knowledge about the middle of November, 1923. That after the refusal of the defendants to answer the interrogatories to her bill in 1923, and before that case went to trial, she made every possible effort to learn the facts. They were claiming the co-defendant Catherine D. McGrew had paid a consideration for that property; that she had a

separate estate. And she was absolutely unable to find out anything in regard to that separate estate they were claiming; and had been unable to until this year, prior to the filing of this present suit. That after the bill filed in 1923 was dismissed, she had a thorough search of the records made, and found absolutely nothing stood in the name of the defendant John L. McGrew. And after the filing of this present suit she discovered that he had invested in property down in Hollywood, Florida, and in a summer
41 home out here on the Severn River, Maryland, in the name of the co-defendant Catherine D. McGrew. The defendant, Catherine D. McGrew, was Catherine Dalton before her marriage, and lived at Cherrydale, Virginia. That plaintiff found this out within the year prior to the filing of this present suit. That she was a very poor woman, before her marriage to the defendant John L. McGrew, and was working in a store for her living. That nothing has been paid on account of the judgment. Over the objection and exception of defendants, there was offered in evidence a certified copy of a release of the above mentioned deed of trust for \$4,000 on the property 3168 Eighteenth Street, N. W., duly executed on February 28, 1921, and recorded among the land records aforesaid, on March 7, 1921, in Liber 4472, at folio 184. There was also offered in evidence a certified copy of the release of the \$2,000 deed of trust placed on the said property at the time of the purchase, duly executed on February 25, 1921, and recorded among the land records aforesaid, on February 26, 1921, in Liber 4477, at folio 349, and also a certified copy of a deed of trust for \$6,000, placed on the said property, executed February 10, 1921, by Catherine D. McGrew, defendant herein, to Edward W. Whiteside and Harvey T. Winfield, Trustees, and recorded February 14, 1921, among the land records aforesaid, in Liber 4500, at folio 69, and a certified copy of the release of said trust, duly executed on January 16, 1926, and recorded among the land records aforesaid, on January 21, 1926, in Liber 5659, at folio 352. The defendants have lived in the Eighteenth Street property as their home practically from the time of purchasing it.

On cross-examination, the witness testified that she was present when the other case was tried but did not testify, because she could not get the facts at that time.

Thereupon **Gladys E. Apple**, called as a witness on behalf of the plaintiff, testified that she was the daughter of the plaintiff and John L. McGrew. Over the objection
42 and exception of the defendant, Catherine D. McGrew, that it was hearsay and not binding upon her, witness testified that she had interviewed her father in reference to his indebtedness to her mother, at her mother's request. That the first time was in the summer of 1917. He had failed to make an interest payment and her mother sent her to him to find out why. That he said he had exchanged the Virginia property for an apartment on Twentieth Street, and that was the excuse he gave for not making the interest payment to her mother. Later her mother heard he was transferring his property to his present wife's name, and sent her to him to ask why he was doing this while her notes were outstanding. That he said he was transferring it to her name, but it was just temporary and a matter of convenience, and that was all. That she went at her mother's request, and then went back to her and told her exactly what he said, fully.

On cross-examination, the witness stated that she appeared and testified for the plaintiff in the other case.

And thereupon **W. W. Duffey**, Vice-President and Treasurer of Stanley H. Horner, Inc., called as a witness on behalf of the plaintiff, testified that the records of their firm showed that an automobile had been purchased in the name of Catherine D. McGrew of 3168 Eighteenth Street, on November 14, 1922; that it was a new Buick automobile. It was sold under a conditional bill of sale and the deferred purchase money notes, payable monthly, were paid in eight months after date of sale. That the contract showed the full price of the car and the monthly payments, but did not show who made the payments; that he had no knowledge of that. Whereupon, the original contract, dated November 14, 1922, was offered in evidence.

Thereupon **Edward R. Deane**, called as a witness for the plaintiff, testified that he was employed in the License Bureau of the District Government; that the Bureau
43 in 1926 and in 1927 issued a license to Catherine D. McGrew of 3168 Eighteenth Street, N. W., as the owner of an automobile. Whereupon counsel for defend-

ants admitted on the record that the license issued to the said Catherine D. McGrew, in both 1926 and 1927, was for the Buick automobile purchased from Stanley H. Horner, Inc., in 1922.

Thereupon **James W. Ireland**, Assistant Treasurer of American Security and Trust Company, called as a witness on behalf of the plaintiff, testified that a safe deposit box in that institution was rented in the name of Catherine D. McGrew of 3168 Eighteenth Street, N. W., on the 31st day of March, 1920; that it was the only box Mrs. McGrew had; that John L. McGrew had no safe deposit box. That the said rental contract is still in force and written authority deputizing John L. McGrew to have access to the box is still in force. Whereupon the original rental contract and written authority deputizing John L. McGrew to have access to the said safety deposit box, both dated March 31, 1920, were offered in evidence. And counsel for defendants agreed on the record that the contract and written authorization were set out in full in the suit at law No. 65,117, D. C. Supreme Court.

Thereupon, **G. M. Stevensin**, being called as a witness on behalf of plaintiff, testified that he was employed by Garfinckle & Company, Thirteenth and F Streets; that the only record the Company had showing the employment by the store in 1913 of Catherine Dalton of Cherrydale, Virginia, was an alphabetical card, as all their other records are destroyed at the end of five years. Whereupon, the card was offered in evidence and is in words and figures as follows:

“Dalton, Miss K.
Cherrydale, Va.

R. F. D.
4-9-13

Gown hand
left 1917—Married”

44 Thereupon, **Carl A. Heisterman**, being called as a witness on behalf of plaintiff, testified as follows: I am a lawyer. In the fall of 1923 I was employed by the plaintiff in this case to make an investigation to see if the defendant, John L. McGrew, had any assets and to see if the defendant, Catherine D. McGrew, had any assets prior

to her marriage, any separate estate. I found no assets standing in Mr. McGrew's name some time after his marriage to the present Mrs. McGrew, nor did I find any separate estate in Mrs. McGrew before her marriage to Mr. McGrew. Thereupon, defendants moved to strike out the answer of the witness to the question, on the ground that it was a mere conclusion of law, but the Court overruled said objection, to which exception was duly noted.

And thereupon, the plaintiff rested.

Thereupon, it was admitted on the record that on the 8th day of February, 1923, a writ of attachment was issued on the judgment sought to be enforced, which attachment was levied on the safe deposit box of Catherine D. McGrew in the American Security and Trust Company, and that said attachment is still in full force and effect.

Thereupon the defendants offered in evidence the proceedings in equity cause No. 41,397 on the dockets of the Supreme Court of the District of Columbia, also the record on appeal No. 4305, April Term 1925, in the Court of Appeals of the District of Columbia; also the briefs filed on behalf of plaintiff in Causes No. 4075 and No. 4305 in the Court of Appeals of the said District; the said equity cause No. 41,397 showing that on the 15th day of January 1923, the plaintiff, Olive S. McGrew, filed in said cause a judgment creditor's bill against the defendants, John L. McGrew and Catherine D. McGrew, wherein she alleged that on March 30, 1921, she recovered against the said defendant John L. McGrew in suit at law No. 65,117, a judgment for Seven Thousand Six Hundred and Twenty-nine Dollars and Seventy-five Cents (\$7,629.75), with interest on Two Hundred and Forty Dollars (\$240) thereof from February 15, 1918, on Two Hundred and Forty Dollars (\$240) thereof from August 15, 1918, and on Seven Thousand One Hundred and Forty-nine Dollars and Seventy-five Cents (\$7,149.75) thereof from February 15, 1919, together with costs amounting to Thirty-four Dollars and Seventy Cents (\$34.70); that on January 2nd, 1923, a writ of fieri facias was issued upon said judgment and returned nulla bona, and that said judgment remains in full force and is wholly unsatisfied; that the defendant, Catherine D. McGrew, is the holder of record of premises known as Lot 191 in Charlotte Daily's subdivision of Mount Pleasant

and Pleasant Plains, recorded in Liber County 20, at folio 28, in the office of the Surveyor of the District of Columbia, otherwise known as 1680 Irving Street, Northwest, in said District, and Lot 58 in Harriet T. Jones' subdivision of Ingleside, Block 18 in Walbridge's subdivision of Ingleside, as per plat in Jones' subdivision, Liber County 20, at folio 74, in the Office of the Surveyor of the District of Columbia, beng otherwise known as No. 3168 Eighteenth Street, Northwest, in said District; that plaintiff does not know, and therefore cannot state, the exact interest of said defendant Catherine D. McGrew in said pieces or parcels of land and premises, or either, and therefore cannot allege or describe the same otherwise than as aforesaid; that she believes, and therefore avers, that the defendant, Catherine D. McGrew, holds and has whatever interest she may have, appear to have or claim in the said pieces or parcels of land and premises, and each of them, for the benefit of defendant John L. McGrew, who is in equity the real owner thereof, and that said interests are in equity subject to be sold and the proceeds thereof applied to the payment and satisfaction of her judgment aforesaid. The bill prayed *inter alia* that the said defendants severally discover and disclose the interests respectively of each in the said pieces or parcels of land and premises; that the said pieces or parcels of land and premises, and each of them, be decreed to be subject to the payment and satisfaction of plaintiff's

46 said judgment, and to that end that the same, and each of them, may be sold and the proceeds thereof applied accordingly.

That the defendant, Catherine D. McGrew, filed her answer to said bill under oath, wherein she denied that she was the owner of said premises 1680 Irving Street, Northwest, but admitted that she was the owner of said premises 3168 Eighteenth Street, Northwest, subject to an indebtedness of Three Thousand Six Hundred Dollars (\$3,600.) secured by deed of trust thereon, and denied that she held said premises for the benefit of said John L. McGrew or that he had any interest whatsoever therein.

That the defendant, John L. McGrew, answered said bill under oath, setting up that the said Catherine D. McGrew was the absolute owner of said premises 3168 Eighteenth Street, Northwest, and that said Catherine D. McGrew has

some interest in premises 1680 Irving Street, but is not the owner of record thereof, and denied that she held said property for his benefit, or that he had any interest, right or ownership therein.

Thereupon, on October 23, 1923, the plaintiff filed interrogatories to the said defendants.

Objections were filed by defendants to said interrogatories in November 1923, on the principal ground that to answer the same they would be required to testify against one another, and to disclose confidential communications between them. Said interrogatories and objections are fully set out in the record designated by the plaintiff on her cross-appeal herein.

That issue being joined, said cause came on for final hearing and that at the trial of said cause, there was offered in evidence in behalf of the said plaintiff, five of the conveyances of the lands and premises referred to in the original bill in this cause; that Gladys E. Apple was called as a

47 witness for the plaintiff and testified in substance as she did at the trial of this cause; that the defendants, Catherine D. McGrew and John L. McGrew, were called as witnesses for the plaintiff, but objected to the questions propounded to them, and their objections were sustained by the Court; and that thereupon the plaintiff rested her case.

That on, to-wit, the 12th day of November, 1924, there was passed in said cause a decree dismissing the bill therein, with costs.

That from said decree dismissing said bill, said plaintiff prosecuted an appeal to the Court of Appeals of the District of Columbia, and said decree was by said Court of Appeals affirmed on the 15th day of April, 1926.

And thereupon, the defendant moved separately to strike out all of the certified copies of the deeds offered in evidence.

And thereupon the defendant rested.

The foregoing is the substance of all of the testimony offered or given in the cause, and the same accordingly is this 27th day of June, 1928, approved as the statement of evidence to be considered on the appeal of the defendants

in the above entitled cause, and the cross-appeal filed herein.

WM. HITZ,
Justice.

O. K.,
OLNIE B. LACY,
Att'y for Plff.

[Endorsed:] Equity. No. 46273. Olive S. McGrew, plaintiff, vs. John L. McGrew and Catherine D. McGrew, Defendants. Statement of Evidence. Minor, Gatley & Drury, Attorneys at Law, Colorado Building, Washington, D. C. Filed Jun. 27, 1928.

Endorsed on cover: District of Columbia Supreme Court. No. 4797. John L. McGrew and Catherine D. McGrew, appellants, vs. Olive S. McGrew. Court of Appeals, District of Columbia. Filed Aug. 7, 1922. Henry W. Hodges, Clerk.

(2965.)

TRANSCRIPT OF RECORD

Court of Appeals of the District of Columbia

APRIL TERM, 1928.

No. 4799.

OLIVE S. McGREW, CROSS-APPELLANT,

v.s.

JOHN L. McGREW AND CATHERINE D. McGREW.

CROSS-APPEAL FROM THE SUPREME COURT OF THE DISTRICT
OF COLUMBIA.

FILED AUGUST 8, 1928.

PRINTED SEPTEMBER 25, 1928.

Court of Appeals of the District of Columbia

APRIL TERM, 1928.

No. 4799.

OLIVE S. MCGREW, CROSS-APPELLANT,

vs.

JOHN L. MCGREW AND CATHERINE D. MCGREW,
APPELLEES.

CROSS-APPEAL FROM THE SUPREME COURT OF THE DISTRICT
OF COLUMBIA.

INDEX.

	Original	Print
Caption	<i>a</i>	1
Transcript of record in Court of Appeals (at law, No. 41397)	1	4
Memorandum: \$50 deposited by plaintiff for costs on appeal.	23	31
Assignments of error on cross-appeal.....	23	31
Designation of record on cross-appeal.....	23	31
Clerk's certificate.....	25	32

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 14, 1928.

Court of Appeals of the District of Columbia

No. 4799.

OLIVE S. MCGREW, Cross-Appellant,

vs.

JOHN L. MCGREW ET AL.

a Supreme Court of the District of Columbia.

In Equity.

No. 46273.

OLIVE S. MCGREW, Plaintiff,

vs.

JOHN L. MCGREW and CATHERINE D. MCGREW, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

b

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia, April Term,
1925.

No. 4305.

OLIVE S. MCGREW, Appellant,

vs.

JOHN L. MCGREW and CATHERINE D. MCGREW.

Appeal from the Supreme Court of the District of Columbia.

Filed March 18, 1925. Printed June 5, 1925.

c

Court of Appeals of the District of Columbia, April
Term, 1925.

No. 4305.

OLIVE S. MCGREW, Appellant,

vs.

JOHN L. MCGREW and CATHERINE D. MCGREW, Appellees.

Appeal from the Supreme Court of the District of Columbia.

Index.

	Original	Print
Caption	<i>a</i>	4
Judgment creditor's bill	1	4
Short copy	3	7
Separate answer of Catherine D. McGrew	4	7
Answer of defendant John L. McGrew	5	9
Interrogatories to the defendant John L. McGrew	6	10
Interrogatories to the defendant Catherine D. McGrew	7	11
Objections of Catherine D. McGrew to interrogatories	8	13
Objections of John L. McGrew to interrogatories	9	14
Order overruling objections to interrogatories ..	11	16
Mandate of Court of Appeals	14	16
Order on mandate of Court of Appeals	16	18
Decree dismissing bill	16	18
Appeal noted	17	19
Memorandum: Bond of plaintiff on appeal for \$100 approved and filed	17	19
Assignments of error	17	19
Memorandum: Statement of evidence signed ...	18	20
Designation for record	18	20
Clerk's certificate	20	21

1 Court of Appeals of the District of Columbia.

No. 4305.

OLIVE S. MCGREW, Appellant,

VS.

JOHN L. MCGREW ET AL.

Supreme Court of the District of Columbia.

At Law.

No. 41397.

OLIVE S. MCGREW, Plaintiff,

VS.

JOHN L. MCGREW and CATHERINE D. MCGREW, Defendants.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Judgment Creditor's Bill.

Filed January 15, 1923.

In the Supreme Court of the District of Columbia.

Equity. No. 41397.

OLIVE S. MCGREW, Plaintiff,

VS.

JOHN L. MCGREW and CATHERINE D. MCGREW, Defendants.

Plaintiff states as follows:

1. She is a citizen of the United States and a resident of the District of Columbia, and brings this suit in her own right.

2 2. Defendants are husband and wife, citizens of the United States and residents of the District of Columbia, and are sued in their own rights respectively.

3. On, to-wit, March 30, 1921, plaintiff recovered against defendant John L. McGrew, in cause No. 65117 in the Supreme Court of the District of Columbia, a judgment for \$7,629.75, with interest on \$240 thereof from February 15, 1918, on \$240 thereof from August 15, 1918, and on \$7,149.75 thereof from February 15, 1919, together with costs of suit, amounting to \$34.70, on which said judgment execution by the writ of *fieri facias* was duly issued January 2, 1923, and on the same day returned *nulla bona*, and the said judgment for principal, interest and costs as aforesaid remains and is in full force, virtue and effect and wholly unsatisfied; and so far as plaintiff knows the said defendant has no property whereby or out of which the said judgment, or any part thereof, can be recovered at law. A short copy of the said judgment is hereto annexed and made part hereof.

4. Defendant Catherine D. McGrew is the holder of record of a certain interest in each of the following pieces or parcels of land and premises situate in the District of Columbia, namely, (1) lot 191, in Charlotte Dailey's Subdivision of parts of "Mt. Pleasant and Pleasant Plains," as recorded in Liber County 20, Folio 28, in the office of the Surveyor of the District of Columbia, the said land and premises being otherwise known as No. 1680 Irving Street, Northwest, in the City of Washington, in said District, and (2) lot 58, in Harry T. Jones' Subdivision of "Ingleside" block 18, in Walbridge's Subdivision of "Ingleside," as per plat in Jones' Subdivision, Liber County 20, Folio 74, in the office of the Surveyor of the District of Columbia, the said land and premises being otherwise known as No. 3168 Eighteenth Street, Northwest, in said City of Washington. Plaintiff does not know, and therefore cannot state, the exact interest of said defendant Catherine D. McGrew in the said pieces of parcels of land and premises or *euther*, and therefore cannot allege or describe the same otherwise than as aforesaid.

5. As plaintiff believes, and therefore avers and charges, defendant Catherine D. McGrew holds and has whatever interest she may have, appear to have or claim in the said pieces or parcels of land and premises, and each of them, for the benefit of defendant John L. McGrew, who is in equity the real owner thereof; and plaintiff accordingly

further avers and charges that the said interests, and each of them, are in equity subject to be sold and the proceeds thereof applied to the payment and satisfaction of her judgment aforesaid, and to that end she files this her bill of complaint.

The premises considered, plaintiff therefore prays as follows:

First. That process may issue to said defendants, and each of them, commanding them, and each of them, to appear to and answer the exigency hereof;

Secondly. That said defendants may severally discover and disclose the interests respectively of each in the said pieces or parcels of land and premises;

Thirdly. That the said pieces or parcels of land and premises, and each of them, may be decreed to be subject to the payment and satisfaction of plaintiff's judgment aforesaid, and that in that behalf and to that end the same, and each of them, may be sold and the proceeds thereof applied accordingly.

Fourthly. That to the ends aforesaid, and each of them, all necessary proceedings may be had and orders made; and

Fifthly. That she may have such other and further relief in the premises as the nature of the case may require.

OLIVE S. MCGREW,
Plaintiff.

HENRY E. DAVIS,
Attorney for Plaintiff.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public, in and for the District aforesaid, personally appeared Olive S. McGrew, who, being by me first duly sworn, deposes and says that she knows the contents of the foregoing bill by her subscribed, and that the statements therein made of her own knowledge are true, and that those made on information and belief she believes to be true.

OLIVE S. MCGREW.

Subscribed and sworn to before me this 14 day of June, 1923.

[NOTARIAL SEAL.]

CHESTER R. SMITH,
Notary Public, D. C.

Filed Jun. 15, 1923. Morgan H. Beach, Clerk.

Short Copy.

Clerk's Office, Supreme Court of the District of Columbia.

At Law. No. 65117.

OLIVE S. MCGREW, Plaintiff,

vs.

JOHN L. MCGREW, Defendant.

1921, March 30.—Judgment Plaintiff for \$7,629.75
 with interest on \$240 from Feb'y 15, 1918, & on
 \$240 from Aug. 15, 1918, & on \$7,149.75 from
 Feb'y 15, 1919.

Cost of Protest	
Costs of Suit	34.70
“ add'l to Satisfy	.40
Less credit, of \$— paid	

4 1923, Jan'y 2.—Fi. Fa., issued.
 “ “ 2.—“ “ returned Nulla bona.
 \$— of said costs due Clerk.

(Test:)

[SEAL.]

MORGAN H. BEACH,

Clerk.

By ALF. G. BUHRMAN,

(Jan'y 2. 1923.)

Ass't Clerk.

Separate Answer of Defendant Catherine D. McGrew.

Filed July 20, 1923.

* * * * *

This defendant, hereby reserving to herself all and all manner of benefit to the many errors, uncertainties and imperfections in the Bill of Complaint filed herein, for answer thereto, or to so much thereof as she is advised it is necessary or material for her to make answer unto, answering says:

1. She admits the averments of paragraph 1 of said Bill.
2. She admits the averments of paragraph 2 of said Bill.

3. She is without personal knowledge with respect to the matters and things averred in the 3d paragraph of said Bill and if the same be material she demands strict proof thereof.

4. Answering the 4th paragraph of said Bill, this defendant denies that she is the owner of record of Lot numbered 191, in Charlotte Dailey's subdivision of lots in Denison & Leighton, Trustees' subdivision of parts of "Mount Pleasant" and "Pleasant Plains," as recorded in Liber County 20, folio 28, in the Office of the Surveyor of the District of Columbia, the said land and premises being otherwise known as No. 1680 Irving Street, Northwest, in the City of Washington, in said District.

She admits that she is the owner of record of Lot numbered 58, in Harry T. Jones' subdivision of "Ingleside," Block 18, in Walbridge's subdivision of "Ingleside," as per plat in Jones' subdivision, Liber County 20, folio 74, in the office of the Surveyor of the District of Columbia, the said land and premises being otherwise known as No. 3168 18th Street, Northwest, in the City of Washington. Said property is subject to an indebtedness of approximately \$3,600.00, secured by deed of trust thereon.

5. Answering the 5th paragraph of said Bill, this defendant denies that the interest she has, as set forth in the 4th paragraph hereof in the properties therein described, is held by her for the benefit of the defendant John L. McGrew and she denies that he is in equity or otherwise the real owner thereof, or that he has any interest therein.

And having fully answered this defendant prays to be hence dismissed with her reasonable costs in this behalf sustained.

CATHERINE D. MCGREW.

MINOR, GATLEY & ROWLAND,

Attorneys for Defendant Catherine D. McGrew.

5 DISTRICT OF COLUMBIA, *To wit:*

Catherine D. McGrew, being first duly sworn upon oath deposes and says: I have read over the foregoing Answer by me subscribed and know the contents thereof; the mat-

ters and things therein stated as of my personal knowledge are true and those stated upon information and belief I believe to be true.

CATHERINE D. MCGREW.

Subscribed and sworn to before me this 18th day of July, 1923.

[SEAL.]

ARTHUR P. DRURY,
Notary Public, D. C.

Answer of Defendant John L. McGrew.

Filed July 25, 1923.

* * * * *

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the jurisdiction of this court, or the many errors, uncertainties, and other imperfections in the Bill of Complaint filed herein, for answer thereunto, or so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant for answer to said Bill of Complaint says:

1, 2. Answering paragraphs 1 and 2 of said Bill of Complaint this defendant admits the allegations therein contained.

3. Answering paragraph 3 of said Bill of Complaint this defendant admits the recovery against him by the plaintiff of a judgment in the Supreme Court of the District of Columbia and for further answer refers to the records of the Supreme Court of the District of Columbia in the law case in which said judgment was recovered.

4. Answering paragraph 4 of said Bill of Complaint this defendant admits that his co-defendant, Catherine D. McGrew is the absolute owner of premises 3168 18th St. N. W. and that said Catherine McGrew has some interest in premises 1680 Irving Street but is not the owner of record thereof.

5. Answering paragraph 5 of said Bill of Complaint this defendant denies that said Catherine D. McGrew holds said

property referred to in the fourth paragraph of said Bill for the benefit of this defendant or that he has any interest, right or ownership therein.

And, having fully answered said Bill of Complaint, this defendant prays that he may be hence dismissed with his costs in this behalf incurred.

JOHN L. MCGREW.

DISTRICT OF COLUMBIA, ss:

John L. McGrew being first duly sworn on oath deposes and says that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein stated are true of his own
6 knowledge except as to matters and things therein stated upon information and belief and that as to the same he believes them to be true.

JOHN L. MCGREW.

Subscribed and sworn to before me this 24th day of July, A. D. 1923.

[SEAL.]

H. W. BARBER,
Notary Public, D. C.

Interrogatories to the Defendant John L. McGrew.

Filed October 23, 1923.

* * * * *

Interrogatories for the Defendant John L. McGrew, in conformity to the provisions of Equity Rule No. 58, the same to be answered by the said Defendant.

1. When were you and your present wife and co-defendant Catherine D. McGrew married?

2. At the time of your marriage to the present Mrs. McGrew what real estate did you own or have any interest in, and to what extent? Answer fully, giving description and location of property, the character and extent of your interest therein, and the value thereof.

3. What disposition have you since made of any of such property or your interest therein, when, to whom and for what consideration in each instance, and what disposition did you make of such consideration in each instance?

4. At the time of your said marriage did you own a tract of land in the State of Virginia? If so, describe the same and give the value thereof and the character and extent of your interest therein.

5. Were you at any time the owner of the Wentworth Apartment House, so-called, No. 707 Twentieth Street, Northwest, in the City of Washington, District of Columbia, and if so, of what interest therein and what was the value thereof, when and how did you acquire and when and to whom did you dispose of the same, and for what consideration?

6. Were you at any time the owner of premises known as No. 1680 Irving Street, Northwest, in the City of Washington, District of Columbia, and if so, of what interest therein, and what was the value thereof, when and how did you acquire and when and to whom did you dispose of the same, and for what consideration?

7. What real estate or any interest, legal or equitable, therein do you now own, where is the same situated, and what is the character and value of the same?

8. Do you own any moneys, bonds, stocks or other securities, or other personal property of any kind, including automobiles? If so, describe each and *and* the value thereof, and state in whose possession or custody the same are, and where the same are now located.

7 9. At the time of your marriage to your present wife and co-defendant, what estate of whatever character had she, where was the same located, and what was the value thereof?

HENRY E. DAVIS,
Attorney for Plaintiff.

Fiat.

Leave to file granted.

WILLIAM HITZ,
Justice.

Oct. 23, 1923.

Interrogatories to the Defendant Catherine D. McGrew.

Filed October 23, 1923.

* * * * *

Interrogatories for the Defendant Catherine D. McGrew in Conformity to the Provisions of Equity Rule No. 58, the Same to be Answered by the said Defendant.

1. When were you married to your co-defendant John L. McGrew?

2. At the time of your marriage to your co-defendant of what property of any kind were you possessed, where was the same located and what was the description, extent and value thereof, and when, how, from whom, and in what form, did you acquire the same?

3. What is your present interest in premises No. 1680 Irving Street, Northwest, in the City of Washington, District of Columbia, how did you acquire the same, and what is the value thereof?

4. What is your present interest in premises No. 3168 Eighteenth Street, Northwest in the City of Washington, District of Columbia, how did you acquire the same and what is the value thereof?

5. If you at any time had any interest in either of the two last mentioned pieces of property and have disposed of the same, when, to whom and for what consideration did you so dispose thereof?

6. Were you at any time the owner of the Wentworth Apartment House, so-called, No. 707 Twentieth Street, Northwest, in the City of Washington, District of Columbia, or any interest therein, and if so, what interest, and when, from whom and for what consideration did you acquire the same, and what was the value thereof?

7. If at any time you were the owner of the said Wentworth Apartment House or any interest therein and have disposed of the same, when, to whom and for what consideration did you so dispose thereof?

8. If at any time you acquired any interest in any of the properties hereinbefore mentioned, from what source did you obtain any consideration paid by you therefor, and what in each instance was the character and amount of such consideration?

9. Since your marriage with your co-defendant, what real estate other than that hereinbefore inquired of has been

held by you, what was the character and extent of your interest therein, from whom and for what consideration did you obtain the same, do you now hold the same, and if not, when, to whom and for what consideration did you dispose thereof?

10. Do you own any moneys, bonds, stocks, or other securities, or other personal property of any kind, including automobiles? If so, describe each and the value thereof, and state when and from whom you acquired the same, and in whose possession or custody the same are, and where the same are now located.

HENRY E. DAVIS,
Attorney for Plaintiff.

Fiat.

Leave to file granted.

WILLIAM HITZ,
Justice.

Oct. 23, 1923.

Objections of Catherine D. McGrew to Interrogatories.

Filed November 2, 1923.

* * * * *

Now comes here the defendant, Catherine D. McGrew, by her attorneys Messrs. Minor, Gatley & Rowland, and files these her objections to the Interrogatories filed herein by the plaintiff on the 23d day of October, 1923, to be answered by her.

First. She objects to all of said interrogatories numbered respectively 1 to 10, both inclusive, on the ground that no proper foundation is laid in the bill herein upon which to base such interrogatories. She further objects thereto on the ground that to require her to answer such interrogatories would be tantamount to compelling her to testify against her husband, contrary to law.

Second. For additional objections to interrogatories numbered respectively 2, 6, 7, 8, 9 and 10 she says:

a. Said interrogatories are not germane to any issue involved in this case.

b. Said interrogatories are too broad and indefinite.

Third. For additional objections to said interrogatories numbered 2 to 10, both inclusive, she says:

Said interrogatories do not seek the disclosure of ultimate facts only material to the issues involved herein, but seek the disclosure merely of matters of evidence.

Fourth. For additional objection to said interrogatories numbered 3 to 10, both inclusive, she says:

That for her to make answer to said interrogatories, or either of them, would make it necessary for her to disclose and set forth confidential communications between herself and her husband; and she is advised by counsel that she cannot be compelled so to do. In support hereof defendant files herewith her affidavit and prays that the same may be read and considered as a part hereof.

MINOR, GATLEY & ROWLAND,
Attorneys for Defendant Catherine D. McGrew.

9 DISTRICT OF COLUMBIA, ss:

Catherine D. McGrew, being first duly sworn, deposes and says:

I am one of the defendants in the above-entitled cause and am the wife of my co-defendant John L. McGrew.

I have read over the interrogatories filed herein by the plaintiff to be answered by me and say that for me to make answer to said interrogatories numbered respectively 2 to 10, both inclusive, or either of them, would necessitate my disclosing and setting forth confidential communications between myself and my said husband.

CATHERINE DALTON MCGREW.

Subscribed and sworn to before me this 2nd day of November, 1923.

[SEAL.]

NEENAH LAUB,
Notary Public, D. C.

Objections of John L. McGrew to Interrogatories.

Filed November 5, 1923.

* * * * *

Now comes the defendant, John L. McGrew, by his attorney, Stanley D. Willis, and objects to each and every interrogatory filed herein on the 23rd day of October 1923, for answer by him, and as grounds therefor says:

1. That no proper foundation is laid in the bill of complaint herein whereon to base said interrogatories.

2. That said interrogatories are not germane to the issues joined herein.

3. That said interrogatories are vague, indefinite and general.

4. That said interrogatories seek disclosure of evidence, not peculiarly within the knowledge of the defendant, and equally accessible to the plaintiff.

5. That said interrogatories require this defendant to testify against his wife, Catherine D. McGrew, a co-defendant herein, against his will and right and contrary to law.

6. That said interrogatories require disclosure of confidential communications between this defendant and his wife a codefendant herein contrary to law.

7. That this defendant files herewith, as a part hereof, his affidavit in support hereof.

STANLEY D. WILLIS,
Attorney for Defendant John L. McGrew.

To Henry E. Davis,
Attorney for plaintiff,
Washington, D. C.:

You will please take notice that I have calendared the
aforegoing objection for hearing before one of the
10 justices presiding in the equity division of the Supreme Court of the District of Columbia, on Friday, November 9th, 1923, at ten o'clock a. m. or as soon thereafter as counsel may be heard.

STANLEY D. WILLIS,
Attorney for Defendant John L. McGrew.

DISTRICT OF COLUMBIA:

John L. McGrew being first duly sworn, on oath deposes and says that he is one of the defendants in the above entitled case and that his wife, Catherine D. McGrew is a co-defendant herein; that your affiant and said Catherine D. McGrew were lawfully married on the 3rd day of January A. D., 1917 and since that time have lived together as husband and wife and still continue to do so; that your affiant has seen and read certain interrogatories filed herein for answer by him and your affiant says that to compel answer

by him to interrogatories number 2 to 9 inclusive would require and compel him against his objection to testify for or against his wife, a co-defendant herein and disclose confidential communications between your affiant and his said wife, contrary to law; that your affiant is advised and believes that he is not required to so testify nor make any such confidential disclosures and hereby exercises his privilege and right of declining to so testify; that your affiant files this affidavit in support of his objections attached hereto and made a part hereof.

JOHN L. MCGREW.

Subscribed and sworn to before me this 5th day of November A. D., 1923.

H. W. BARBER,
Notary Public, D. C.

Order Overruling Objections to Interrogatories.

Filed November 19, 1923.

* * * * *

This cause coming on for consideration by the Court upon the objections of each of the defendants to the interrogatories filed by the plaintiff to be answered by the said defendants severally, and having been considered by the Court,

It is, this 19th day of November, 1923, Adjudged and ordered that the said exceptions be, and they hereby are severally overruled, and that the defendants severally answer the said interrogatories within thirty days from the date hereof.

WILLIAM HITZ,
Justice.

11 *Mandate.*

Filed April 25, 1924.

UNITED STATES OF AMERICA, ss:

[SEAL.] The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between

Olive S. McGrew, plaintiff, and John L. McGrew and Catherine D. McGrew, defendants, Equity No. 41,397, wherein the order of the said Supreme Court entered in said cause on the 19th day of November, A. D. 1923, is in the following words, viz:

This cause coming on for consideration by the Court upon the objections of each of the defendants to the interrogations filed by the plaintiff to be answered by the said defendants severally, and having been considered by the Court,

It is, this 19th day of November, 1923, Adjudged and ordered that the said exceptions be, and they hereby are, severally overruled, and that the defendants severally answer the said interrogatories within thirty days from the date hereof.

WILLIAM HITZ,
Justice.

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the acts of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of April, in the year of our Lord one thousand nine hundred and twenty-four, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed with costs, and that the said defendants recover against the said plaintiff, Olive S. McGrew, Forty-eight Dollars and Twenty-five Cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Supreme Court.

April, 7, 1924.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause in con-

formity with the opinion and decree of this Court as accord-
ing to right and justice and the laws of the United States
ought to be had, the said appeal notwithstanding.

12 Witness the Honorable Constantine J. Smyth,
 Chief Justice of said Court of Appeals, the 25th day
of April in the year of our Lord one thousand nine hundred
and twenty-four.

HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

Costs of Defendants:	
Clerk	\$17.75
Attorney	5.00
Printing Record	25.00
	\$48.25

Order on Mandate of Court of Appeals.

Filed October 14, 1924.

* * * * *

Upon consideration of the Mandate of the Court of Ap-
peals filed herein April 25, 1924, reversing with costs
against the plaintiffs a decree of this Court passed herein
on the 19th day of November, 1923, it is by the Court
this 14th day of October, 1924,

Adjudged, ordered and decreed that the exceptions and
objections of the defendants herein to certain interroga-
tories filed herein by the plaintiff be and the same are
hereby sustained.

And it is further ordered that the defendants herein re-
cover of the plaintiff herein the sum of \$48.25 for their
costs herein expended and have execution therefor.

WILLIAM HITZ,
Justice.

Decree Dismissing Bill.

Filed November 12, 1924.

* * * * *

This cause coming on to be heard at this term upon the
pleadings and testimony the same was argued and sub-

mitted to the Court. It is thereupon, after due consideration thereof, by this Court and the authority thereof, this 12th day of November, 1924, adjudged, ordered and decreed that the bill of complaint be and the same is hereby dismissed, with costs.

By the Court:

A. A. HOEHLING,
Justice.

From the foregoing decree the plaintiff in open court notes an appeal to the Court of Appeals and the bond on appeal if for costs is hereby fixed at \$100 or a deposit of \$50 in cash, in lieu thereof, and if a supersedeas the penalty of such bond shall be in the sum of Fifteen thousand dollars (\$15,000).

A. A. HOEHLING,
Justice.

13

Memorandum.

December 4, 1924.—Bond of plaintiff on appeal for \$100, approved and filed.

Assignments of Error.

Filed January 15, 1925.

* * * * *

The Court erred as follows:

1. In sustaining the objection of defendants to each of the questions propounded to the defendant John L. McGrew as a witness, to which such objection was made, and in declining to permit the said witness to answer the same.
2. In not requiring the said witness John L. McGrew to answer the said questions, and each of them.
3. In sustaining the objection of defendants to each of the questions propounded to the defendant Catherine D. McGrew as a witness, to which such objection was made, and in declining to permit the said witness to answer the same.
4. In not requiring the said witness Catherine D. McGrew to answer the said questions, and each of them.

These assignments to be taken and considered as made severally and separately to each and every of the said questions seriatim.

HENRY E. DAVIS,
Attorney for Plaintiff.

Received copy.

MINOR, GATLEY & ROWLAND,
Atty. for Catherine D. McGrew.

Memorandum.

January 15, 1925.—Statement of evidence signed.

Designation for Record.

Filed January 24, 1925.

• • • • •

Plaintiff appellant, by her attorney, designates the following to constitute the record on the appeal in the above-entitled cause:

1. Bill of complaint.
2. Answer of defendant John L. McGrew.
3. Answer of defendant Catherine D. McGrew.
4. Interrogatories to defendant John L. McGrew.
- 14 5. Interrogatories to defendant Catherine D. McGrew.
6. Objections of defendant John L. McGrew.
7. Objections of defendant Catherine D. McGrew.
8. Order overruling objections to interrogatories.
9. Mandate of the Court of Appeals of the District of Columbia on the appeal of defendants from order overruling objections to interrogatories.
10. Order on the mandate of the Court of Appeals.
11. Decree dismissing bill.
12. Memorandum of appeal and undertaking thereon.
13. Statement of evidence.
14. Assignment of error.
15. This designation.

HENRY E. DAVIS,
Attorney for Plaintiff, Appellant.

January 24, 1925.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 19, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 41397 at Law, wherein Olive S. McGrew is Plaintiff and John L. McGrew and Catherine D. McGrew are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 17th day of March, 1925.

[Seal Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk,

By CHAS. B. COFLIN,
Asst. Clerk.

EW.

15 In the Supreme Court of the District of Columbia.

Equity. No. 41397.

OLIVE S. MCGREW, Plaintiff,

vs.

JOHN L. MCGREW and CATHERINE D. MCGREW, Defendants.

Statement of Evidence.

On the hearing of the above-entitled cause, on Wednesday, November 12, 1924, the following evidence was offered and given in behalf of the plaintiff:

Deed from defendant John L. McGrew and his former wife, plaintiff herein, to Alfred H. Lawson, recorded March 21, 1911, in Liber 3404, at folio 310, one of the Land Records of the District of Columbia, conveying to said Lawson the

tract of land described as Lot 8, Block 9, in a certain subdivision of Bloomingdale, the property being otherwise described as No. 51 Randolph Place, Northwest, Washington, District of Columbia, and improved by an apartment known as the Nebraska Apartment, consideration \$10.

Deed from Alfred H. Lawson to defendant John L. McGrew and his former wife, plaintiff herein, as tenants in common and not as joint tenants, of the same property, recorded March 21, 1911, in Liber 3404, at folio 311, of the Land Records aforesaid, consideration \$10.

Deed from defendant John L. McGrew and his former wife, plaintiff herein, to Stella V. Kefalver of the same property, recorded October 30, 1912, in Liber 3560, at folio 485, of the Land Records aforesaid, consideration \$10 and assumption of an encumbrance of \$10,650.

Deed from defendants John L. McGrew and wife Catherine D. McGrew to Lee Brown, recorded May 26, 1917, of Lot 3, Square 120, otherwise known as the Wentworth Apartment, 707 Twentieth Street, Northwest, Washington, D. C., recorded May 26, 1917, in Liber 3984, at folio 175, of the Land Records aforesaid, consideration \$10 and subject to the existing encumbrance.

Deed from Lee Brown to defendant Catherine D. McGrew of the same property, recorded May 20, 1917, in Liber 3919, at folio 10, of the Land Records aforesaid, consideration \$10 and subject to the existing encumbrance.

Deed from defendants Catherine D. McGrew and husband John L. McGrew to Frederick L. Payne and wife of the same property, recorded January 30, 1919, in Liber 4139, at folio 437, of the Land Records aforesaid, consideration \$10 and reciting that the property was subject to an indebtedness of \$22,000, and a further indebtedness of \$22,800, assumed by the grantees.

Deed from Lee Brown to defendant Catherine D. McGrew of Lot 191, in a subdivision of parts of Mount Pleasant and Pleasant Plains, otherwise known as 1680 Irving Street, Northwest, Washington, D. C., recorded May 26, 1917, in Liber 3984, at folio 174, of the Land Records aforesaid, consideration \$10.

Deed from Edmond Joseph Brennan and wife of Lot 58 of sub-division of Ingleside, otherwise known as No. 3168 Eighteenth Street, Northwest, Washington, D. C., recorded

May 3, 1920, in Liber 4366, at folio 114, of the Land Records aforesaid, to defendant Catherine D. McGrew, consideration \$10 and the assumption of an encumbrance of \$4,000.

The record in cause No. 65117, at law, in the Supreme Court of the District of Columbia, showing the recovery by plaintiff against defendant John L. McGrew of the judgment set forth and described in the bill of complaint herein, the issue of execution thereon returned unsatisfied, and that the same remains in full force and effect wholly unpaid and unsatisfied; and also showing by the affidavit of defendant John L. McGrew filed in the said cause that by deed dated October 13, 1912, and recorded in Deed Book 107, page 454, of the Land Records of Fauquier County, Virginia, Stella V. Kefalver, unmarried, conveyed to defendant John L. McGrew and plaintiff, his then wife, as tenants in common, certain tracts of land situate in said Fauquier County, in exchange for the Nebraska Apartment House aforesaid; that by deed of February 15, 1916, plaintiff conveyed to defendant John L. McGrew her interest in the said lands situate in Fauquier County, Virginia, for the consideration of \$8,500, represented by promissory notes of said defendant secured by deed of trust upon the said lands, which afterwards being sold for default in payment of a prior encumbrance realized the net sum of \$1,020.25, and that plaintiff's judgment in said cause No. 65117, at law, was for the deficiency on account of said defendant's said promissory notes aforesaid, this was received in evidence against the defendant John L. McGrew only.

By **Gladys E. McGrew**, who testified as follows:

On direct examination:

I am the daughter of plaintiff and defendant John L. McGrew. In the summer or early fall of 1917 I had a conversation with my father about his property, in the Willard Hotel. My mother informed me she had heard this property had been transferred to his present wife, so I went to him to see why he had done this, and I asked him why inasmuch as the notes were outstanding against him in favor of my mother the transfer had been made at this time, and he said it was only a temporary transaction and that he intended to take it back himself later; the property I men-

tioned to him was the Wentworth Apartment and a farm, the Wentworth that he received in exchange for the farm; I saw him two or three times thereafter but that was the only occasion on which I talked about his conveying this property; naturally when I found out that he was transferring this property upon which my mother held
17 notes I was interested to see why he did it before her subsequent judgment was satisfied; in mentioning this property to my father in the interview at the Willard Hotel I just said "your property," I didn't specify.

On cross-examination:

I am single now. I have been married and divorced. The only conversation I had with my father was at the Willard Hotel in this connection, concerning conveyance of property; I was then speaking of the farm in Virginia and the Wentworth Apartment and the indebtedness of my father to my mother, which was secured on the farm in Virginia; whether it was at all secured on the Wentworth Apartment, I do not know about the details of what was secured, I supposed that when a piece of property is transferred the man assumes the debt on it; whether my father and mother conveyed the farm in Virginia to Miss Kefalver, I do not know whom they conveyed it to; the property I had in mind and was talking about was the property he owned at that time; the notes of my father were secured on the farm, the Wentworth Apartment was not in the transaction at the time the notes were made; whether I specified any property in the conversation with my father, it was more or less general, just all of his property whatever it was; whether I just said "his property" I don't know but the farm was mentioned, I cannot recall, but that was what I had in mind and what he did.

On redirect examination:

I mentioned property generally, and when I asked my father for an explanation for that his reply was that he had made the conveyance but that it was temporary.

By defendant **John L. McGrew**, who, being sworn over the objection and exception of the defendants, testified as follows:

On direct examination:

I am one of the defendants in this case and the other defendant Catherine D. McGrew is my wife.

And thereupon each of the following questions was successively propounded to the witness:

At the time of your marriage to the present Mrs. McGrew, what real estate did you own or have any interest in, and to what extent?

Between the date of your marriage to the present Mrs. McGrew and the month of May, 1917, what real estate did you own or have any interest in and to what extent?

What disposition have you since made of any of such property or your interest therein, of which I have inquired in the two preceding interrogatories, and each of them, and to whom and for what consideration in each instance, and what disposition did you make of the consideration in each instance?

18 At the time of your marriage to the present Mrs. McGrew, did you own a tract of land in the State of Virginia, if so, describe the same and give the value thereof and the character and extent of your interest therein.

Were you at any time the owner of the Wentworth apartment house, so-called, No. 707 20th Street, Northwest, in the city of Washington, District of Columbia, and if so, of what interest therein and what was the value thereof, when and how did you acquire and when and to whom did you dispose of the same, and for what consideration?

Were you at any time the owner of premises known as No. 1680 Irving Street, Northwest, in the City of Washington, District of Columbia, and if so, of what interest therein, and what was the value thereof, when and how did you acquire and when and to whom did you dispose of the same, and for what consideration?

What real estate or any interest, legal or equitable, therein do you now own, where is the same situated, and what is the character and value of the same?

What real estate or any interest, legal or equitable, there-

in do you now own, where is the same situated, and what is the character and value of the same?

At the time of your marriage to your present wife and co-defendant, what estate of whatever character had she, where was the same located, and what was the value thereof?

To each of which questions as the same was propounded defendants severally by their attorneys objected, upon the ground that to answer the question would make the defendant a witness against his co-defendant, and that the object of the question was to elicit from the witness testimony against his co-defendant, who is his wife, and on the further ground that the Court of Appeals has held that he cannot be compelled to answer it.

And as to each of the said questions the Court sustained the said objection and declined to permit the witness to answer the same, and in each instance plaintiff by her attorney duly excepted to the ruling of the Court.

And thereupon plaintiff's attorney made the following proffer and offer to the Court: I offer to prove by these questions which I have put to the witness that at the time of his marriage to his present wife he had an interest in certain real estate which has since been disposed of, that is, real estate in Virginia, and that since his marriage to his present wife and before the month of May, 1917, he had acquired other property including the Wentworth Apartment House, in the City of Washington, D. C., which ultimately, in May, 1917, through mesne conveyance, was conveyed to his present wife, Catherine D. McGrew; also that between the time of his marriage to his present wife and May, 1917, he was the equitable owner, or the owner in fact, of property 1680 Irving Street, Northwest, Washington, D. C., in the name however of Lee Brown, by whom in May, 1917, it was conveyed to his present wife, Catherine D. McGrew; and also that between the date of his marriage to his present wife and May, 1920, he was the owner in fact, although not in name, of 3168 18th Street, Northwest,
19 or else purchased the same with his own funds and means from one Edmond Joseph Brennan, whom he procured to have the property conveyed to his present wife, Catherine D. McGrew, intending by these various matters

of proof to show that although the nominal owner of the interest expressed in her, Catherine D. McGrew is in fact holding these properties for his benefit and in his interest.

But the Court declined the said offer or to permit the proffered proof to be given, and the said witness was excused.

By **Catherine D. McGrew**, who, being sworn as a witness over the objection of the defendants, testified as follows:

On direct examination.

My name is Catherine D. McGrew. I am one of the defendants in this case, the wife of the other defendant, John L. McGrew. I was married to Mr. McGrew January 3, 1917.

And thereupon each of the following questions was successively propounded to the witness:

At the time of your marriage to Mr. McGrew, what property of any kind were you possessed of, where was the same located, and what was the description, extent and value thereof and when, how, from whom and in what form did you acquire the same?

Mrs. McGrew, what is your present interest in premises No. 1680 Irving Street, Northwest, in the City of Washington, District of Columbia, how did you acquire the same, and what is the value thereof?

What is your present interest in premises 3168 18th Street, Northwest, in the City of Washington, District of Columbia, how did you acquire the same, and what is the value thereof?

If you at any time had any interest in either of the two last mentioned pieces of property and have disposed of the same, when, to whom and for what consideration did you so dispose thereof?

Were you at any time the owner of the Wentworth Apartment House, so-called, No. 707 20th Street, Northwest, in the City of Washington, District of Columbia, or any interest therein, and if so, what interest, and when, from whom and for what consideration did you acquire the same, and what was the value thereof?

If at any time you were the owner of the said Wentworth Apartment House or any interest therein and have disposed of the same, when, to whom and for what consideration did you so dispose thereof?

If at any time you acquired any interest in any of the properties hereinbefore mentioned, from what source did you obtain any consideration paid by you therefor, and what in each instance was the character and amount of such consideration?

Since your marriage with your co-defendant, what real estate other than that hereinbefore inquired of has been held by you, what was the character and extent of
20 your interest therein, from whom and for what consideration did you obtain the same, do you now hold the same, and if not, when, to whom and for what consideration did you dispose thereof?

To each of which questions as the same was propounded defendants severally by their attorneys objected, upon the ground that to answer the question would make defendant a witness against her co-defendant, and that the object of the question was to compel the witness to testify against her co-defendant, who is her husband.

And as to each of the said questions the Court sustained the said objection and declined to permit the witness to answer the same, and in each instance plaintiff by her attorney duly excepted to the ruling of the Court.

And thereupon plaintiff's attorney made the following proffer and offer to the Court: I make the same tender as in the case of the former witness, the defendant John L. McGrew, with this addition: I offer to prove by the answers to these interrogatories, collectively and separately, that at the time of her marriage to her present husband and co-defendant, she was possessed of no means, that she has acquired none during her marriage, and that upon taking these properties in her name, as disclosed by the testimony already in, she did so for and on account of her husband and without paying any consideration therefor and without any consideration therefor moving from her to the grantors.

But the Court declined the said offer or to permit the proffered proof to be given, and thereupon each of the fol-

lowing questions was successively propounded to the witness:

Now, Mrs. McGrew, it appears by the records of the office of the Recorder of Deeds, namely, by deed recorded May 28th, 1917, in liber 3993, at folio 10 of the said land records, that one Lee Brown conveyed to you the property known as the Wentworth Apartment at 707 20th Street, Northwest, otherwise described as lot 3 in square 120 in the City of Washington, District of Columbia. What did you pay for that property?

From whom did you get the money that you paid for that property?

By whom was the total consideration for the conveyance to you paid?

Again it appears by the records of the office of the Recorder of Deeds of the District of Columbia that by deed recorded therein May 26th, 1917, in liber 3984, at folio 174, the same Lee Brown conveyed to you property known as lot 191 in a certain subdivision of Mount Pleasant and Pleasant Plains, the property being otherwise known as 1680 Irving Street, Northwest. What consideration did you pay for acquiring that property by that conveyance?

From whom did you produce the consideration for that conveyance?

In fact, did you pay any consideration of any kind so-ever for that conveyance?

21 To each of which questions as the same was propounded defendants severally by their attorneys objected on the ground that by the questions it was sought to compel this witness to testify against her co-defendant, who is her husband, and on the ground that under the law she cannot be compelled to testify for or against herself or for or against her husband, and as to each of the said questions the Court sustained the said objection and declined to permit the witness to answer the same, and in each instance plaintiff by her attorney duly excepted to the ruling of the Court.

And thereupon plaintiff's attorney made the following proffer and offer to the Court: I offer to prove by answer to these questions just propounded that she paid nothing out of her own resources, that she had nothing to pay, that

the total consideration was furnished by her husband John L. McGrew, that the respective conveyances were taken by her for and on his account.

But the Court declined the said offer or to permit the proffered proof to be given, and thereupon each of the following questions was successively propounded to the witness.

At the time of your marriage to Mr. McGrew, had you any employment?

Prior to March, 1917, and thereafter and until and including May, 1920, what personal resources did you have of any kind?

To each of which questions as the same was propounded defendants severally by their attorneys objected as before, and as to each of the said questions the Court sustained the said objection and declined to permit the witness to answer the same, and in each instance plaintiff by her attorney duly excepted to the ruling of the Court.

And thereupon plaintiff's attorney made the following proffer and offer to the Court: I offer by these questions to prove that she had no means of her own and acquired none during her married life with her husband, John L. McGrew, so that she had not anything wherewith she could make any purchases of real estate or anything else.

But the Court declined the said offer or to permit the proffered proof to be given.

And thereupon the witness was excused.

And there the plaintiff rested; and the foregoing was all the evidence offered or given in the cause, and the same accordingly is, this 15th day of January, 1925, approved as the statement of evidence to be considered on the appeal of the plaintiff in the above-entitled cause.

A. A. HOEHLING,
Justice.

O. K.

MINOR, GATLEY & ROWLAND,
Attys. for Catherine D. McGrew.

22 [Endorsed:] In equity No. 41397. Olive S. McGrew, Plff., vs. John L. McGrew et al., Defts. Statement of evidence. Henry E. Davis, Attorney and Counsel-

lor at Law, Wilkins Building, Washington, D. C. Court of Appeals, District of Columbia. Filed Mar. 19, 1925. Henry W. Hodges, clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 4305. Olive S. McGrew, appellant, vs. John L. McGrew et al. Court of Appeals, District of Columbia. Filed Mar. 18, 1925. Henry W. Hodges, clerk.

23

Memorandum.

May 1, 1928—\$50 deposited by plaintiff for costs on appeal.

Assignments of Error, Cross-appeal.

Filed May 10, 1928.

* * * * *

1. The Court erred in not holding that the equitable interest of the defendant John L. McGrew in premises 3168 18th Street, Northwest, is subject to the lien of the plaintiff's judgment.

2. The Court erred in denying the relief prayed for as to the said property on the ground that the question presented had been already litigated between the parties to this cause and was res judicata.

OLIVE B. LACY,
Attorney for Plaintiff.

Received copy of the above Assignments of Error this 10 day of May, 1928.

MINOR, GATLEY & DRURY,
Attorneys for Defendants.

Designation of Record Cross-appeal.

Filed May 10, 1928.

* * * * *

The Clerk will please prepare transcript of the record on cross-appeal in the above entitled cause, and include therein the following:

- 24 1. Transcript of record No. 4305 Court of Appeals.
 2. Assignments of error.
 3. Memorandum, cash deposit on appeal.
 4. This designation.

OLIVE B. LACY,
Attorney for Plaintiff.

Received copy of the above Designation this 10 day of
May, 1928.

MINOR, GATLEY & DRURY,
Attorneys for Defendants.

- 25 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 23, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 46273 in Equity, where Olive S. McGrew is Plaintiff and John L. McGrew et al are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 6th day of August, 1928.

[SEAL.]

FRANK E. CUNNINGHAM,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 4799. Olive S. McGrew, cross-appellant, vs. John L. McGrew et al. Court of Appeals, District of Columbia. Filed Aug. 8, 1928. Henry W. Hodges, Clerk.

Court of Appeals, District of Columbia.

APRIL TERM, 1928.

No. 4797. No. 4799.

JOHN L. MCGREW AND CATHERINE D. MCGREW,
APPELLANTS,

vs.

OLIVE S. MCGREW.

OLIVE S. MCGREW, CROSS-APPELLANT,

vs.

JOHN L. MCGREW AND CATHERINE D. MCGREW.

**BRIEF IN BEHALF OF APPELLANTS IN NO. 4797
AND APPELLEES IN NO. 4799.**

BENJAMIN S. MINOR,
H. PRESCOTT GATLEY,
ARTHUR P. DRURY,

*Attorneys for Appellants in No. 4797
and Appellees in No. 4799.*

TABLE OF CONTENTS.

	Page
Statement of the case.....	1-10
Assignments of error.....	10-11
Argument	11-27
Conclusions	27

TABLE OF CASES.

Aurora City vs. West, 7 Wall., 82.....	26
Buchanan vs. Alexander, 4 How., 20.....	16
Bank of Tennessee vs. Bebrell, 35 Tenn., 379.....	17
Browning vs. Bettis, 8 Page's Chan. Rep., N. Y., 568.....	20
Baird vs. Dietz, 11 Ky. Law Rep., 759.....	21
Boute vs. Cooper, 90 Ill., 440.....	21
Bluthenthall vs. Bigbie Bros. & Co., 23 App. D. C., 209.....	25
Blackford vs. Wilder, 28 App. D. C., 535.....	25
Baltimore Steamship Co. vs. Phillips, 274 U. S., 316.....	26
Corpus Juris, Vol. 15, p. 1407.....	19
Code, D. C., Sec. 113.....	22
Cromwell vs. County of Sac, 94 U. S., 351.....	26
Dowell vs. Applegate, 152 U. S., 327.....	26
German National Bk. vs. First National Bank, 59 Neb., 14....	21
McCoun vs. Dorsheimer, 1 Clark, N. Y., 144.....	20
Noonan vs. Stein, 56 Colo., 76.....	20
Nolle vs. Oyster, 36 App. D. C., 36.....	25
Postal Telegraph Cable Co. vs. Newport, 247 U. S., 464.....	26
Tompers vs. Tompers, 159 N. Y. S., 817.....	19
The Haytian Republic, 154 U. S., 118.....	26
United States vs. California Bridge Co., 245 U. S., 337.....	26
Valentine vs. Williams, 159 N. Y. S., 815.....	20
Woodworth vs. Gillespie, 7 N. Y. Chan., —.....	20
Whiting vs. Ott, 1 Weekly Law Bulletin (Ohio), 335.....	21

Court of Appeals, District of Columbia.

APRIL TERM, 1928.

No. 4797. No. 4799.

JOHN L. MCGREW AND CATHERINE D. MCGREW,
APPELLANTS,

vs.

OLIVE S. MCGREW.

OLIVE S. MCGREW, CROSS-APPELLANT,

vs.

JOHN L. MCGREW AND CATHERINE D. MCGREW.

**BRIEF IN BEHALF OF APPELLANTS IN NO. 4797
AND APPELLEES IN NO. 4799.**

Statement of the Case.

The appeals in this case are from a decree entered by the court below on the 20th of April, 1928 (R., p. 24), in a judgment creditor's bill brought by Olive S. McGrew (former wife of John L. McGrew) against

John L. McGrew and Catherine D. McGrew, having for its object the procurement of a decree declaring certain real and personal property standing in the name of Catherine D. McGrew to be held by her in trust for John L. McGrew, and the sale of such property and the application of the proceeds of sale to the payment and satisfaction of a certain judgment at law obtained by the said Olive S. McGrew against John L. McGrew on the 30th day of March, 1921, for the sum of seven thousand six hundred and twenty-nine dollars and seventy-five cents (\$7,629.75) (R., pp. 1-15).

The property involved in the proceedings is:

1. Premises No. 3168 Eighteenth Street Northwest.
2. A certain Buick Sedan automobile, purchased November 14, 1922.
3. Contents of safe deposit box No. 6823 in the American Security & Trust Company in the name of Catherine D. McGrew.

The bill (paragraph 25, R., p. 12) also set out the fact that John L. McGrew is an employee of the United States Government in the Bureau of Internal Revenue, in receipt of a salary of forty-eight hundred dollars (\$4,800) a year, payable in monthly installments of four hundred dollars (\$400) (R., p. 12), and prayed that he be required to pay to the receiver to be appointed by the court his monthly salary in excess of one hundred dollars (\$100), as received by him, to be applied to the payment and satisfaction of said judgment (R., p. 15).

The claim of the bill is that John L. McGrew and Catherine D. McGrew were married on the 3rd day of January, 1917 (more than four years before plaintiff obtained her judgment against John L. McGrew), and on that day entered into a conspiracy for the express purpose of delaying, hindering and defrauding his creditors and to render him insolvent and unable to pay the judgment aforesaid, and as a result of which conspiracy he has been stripped of his money and property. It is also alleged in the bill (R., p. 5) that Catherine D. McGrew at the time of her marriage to John L. McGrew, had no separate estate, which averment of the bill is expressly denied in the answer of the defendant to the bill (R., p. 19). No proof in support of this averment of the bill was offered at the trial.

The charge of the bill respecting the automobile in question is that the defendant, John L. McGrew, conspiring with his co-defendant, Catherine D. McGrew, to conceal his assets and property from his creditors, purchased the automobile in question in the name of Catherine D. McGrew, and that at his request she paid one thousand and eight dollars (\$1,008) in cash and gave eight (8) deferred purchase money notes for fifty dollars and ninety-one cents (\$50.91) each, which notes were subsequently paid by Catherine D. McGrew with the moneys of John L. McGrew (Par. 24, R., p. 11).

With respect to the contents of the safe deposit box, the bill alleged that John L. McGrew, conspiring with Catherine D. McGrew to conceal his assets and prop-

erty, rented in the name of Catherine D. McGrew a safety deposit box in the American Security and Trust Company, and that at his request, she entered into a written contract with said company for the rental of the box in her name, which contract gave right of access to the box to John L. McGrew. Upon information and belief, plaintiff charged that the box contained moneys, stocks, bonds, notes, mortgages and other securities and evidences of indebtedness and things of value belonging to said John L. McGrew (Par. 23, R., p. 11).

In and by paragraph 22 of the bill (R., p. 9) it is alleged that on April 30, 1920, while the plaintiff's suit against the defendant John L. McGrew, in which she obtained the judgment aforesaid against him, was pending, John L. McGrew, conspiring with Catherine D. McGrew to delay, hinder and defraud his creditors and to evade the payment of the judgment held by plaintiff, purchased in the name of Catherine D. McGrew, premises No. 3168 Eighteenth Street northwest; that Catherine D. McGrew, at the request of John L. McGrew, paid five thousand dollars (\$5,000) in cash on account of said purchase, which sum of five thousand dollars (\$5,000) was the exclusive property of John L. McGrew, realized from certain other transactions theretofore set forth in the bill and from the salary received by the said John L. McGrew as a Government employee; that Catherine D. McGrew, at the request of John L. McGrew, assumed the payment of the encumbrance of four thousand dollars (\$4,000) then existing upon the property; that in addition, the

said Catherine D. McGrew, as the request of John L. McGrew, executed a certain other deed of trust to secure the payment to the seller of said property of two thousand dollars (\$2,000); that subsequently Catherine D. McGrew, at the request of John L. McGrew, executed a certain deed of trust to secure six thousand dollars (\$6,000) upon said property; that between April 30, 1920, and February 28, 1921, the above mentioned trusts securing respectively four thousand dollars (\$4,000) and two thousand dollars (\$2,000), were paid by the said Catherine D. McGrew out of moneys belonging to the said John L. McGrew; that between February 10, 1921, and January 16, 1926, the six thousand dollars (\$6,000) secured by deed of trust on the property as aforesaid, was paid by Catherine D. McGrew with money of the said John L. McGrew, and that all of the deeds of trust upon said property had been released of record.

In paragraph 26 of the bill (R., p. 13) it is alleged that after diligent search and inquiry, plaintiff had been unable to discover any property of any kind in the District of Columbia or elsewhere owned by the defendant John L. McGrew, in his name, out of which the aforesaid judgment could be collected, or any property other than the aforesaid premises No. 3168 Eighteenth Street northwest, the personal property in the aforesaid safe deposit box and the automobile described in the bill, and in paragraph 29 of the bill (R., p. 14) it is averred that plaintiff is advised by counsel that she is entitled to have the legal title to premises 3168 Eighteenth Street northwest, the said

automobile and the property in the safe deposit box, declared to be held in trust by Catherine D. McGrew for the benefit of John L. McGrew, and have the same sold by a trustee or trustees to be appointed in this cause, for the purpose of satisfying the aforesaid judgment.

To this bill the defendants filed their joint and several answer, under oath (R., pp. 17 to 23), denying explicitly the charges of conspiracy and of fraud made in the bill, denying the averments of the bill insofar as they relate to the automobile in question, the safe deposit box and the alleged purchase of premises 3168 Eighteenth Street northwest, by Catherine D. McGrew with moneys of John L. McGrew. The answer admitted that John L. McGrew was an employee of the Government in receipt of a salary of forty-eight hundred dollars (\$4,800) per annum.

With respect to premises 3168 Eighteenth Street northwest, the answer of the defendants also set up by way of defense, that on the 15th day of January, 1923, the said Olive S. McGrew filed against them a certain bill in equity, No. 41397, wherein it was alleged, *inter alia*, that Catherine D. McGrew was the holder of record of a certain interest in and to said premises No. 3168 Eighteenth Street northwest, and that she held and had whatever interest she may have, appear to have or claim in said premises or parcels of land and premises, and each of them, for the benefit of the defendant John L. McGrew, who is in equity the real owner thereof; and that the said interest was in equity subject to be sold and the proceeds thereof

applied to the payment and satisfaction of the judgment held by said Olive S. McGrew.

The said bill prayed that the said premises be decreed to be subject to the payment and satisfaction of said judgment, and that in that behalf and to that end the same should be sold and the proceeds applied accordingly.

That answers to said bill were filed by John L. McGrew and Catherine D. McGrew, alleging that John L. McGrew had no interest whatever in said premises and asserting the ownership thereof by the said Catherine D. McGrew. That thereafter, on, to-wit, the 12th day of November, 1924, the said cause came on for final hearing, and at the trial thereof the plaintiff offered testimony respecting all of the transactions referred to in the bill of complaint herein seeking to establish the fact that the said premises 3168 Eighteenth Street northwest, was the property of the said John L. McGrew, and that on said 12th day of November, 1924, there was passed in said cause a decree dismissing said bill of complaint. That from said decree an appeal was noted and prosecuted to this Court, and upon a hearing of said cause, the said decree dismissing said bill was affirmed; that the matters and things set forth in the bill herein, in so far as they relate to premises 3168 Eighteenth Street northwest, sought by said bill to be subjected to the payment of said judgment, are *res adjudicata* (R., pp. 17, 18, 21, 22, 23).

The answer of the defendants further set up with respect to the safe deposit box and the contents thereof, referred to in said bill, that on the 8th day of Febru-

ary, 1923, the said Olive S. McGrew, as plaintiff in the suit at law, in which she obtained the judgment against John L. McGrew, caused to be issued in said suit a writ of attachment upon said judgment, whereby credits of the said John L. McGrew were sought to be reached in the hands of the said American Security and Trust Company by serving a copy of said writ of attachment upon said Company, which said attachment is still in force and effect (R., pp. 20, 21).

At the trial of the case it was admitted on the record that this writ of attachment was levied on the safe deposit box of Catherine D. McGrew and that it was still in force and effect (R., p. 37).

Upon the trial of the case the court, in the absence of any evidence to support the averments of the bill, it is respectfully submitted, entered its decree as follows (R., p. 24) :

1. It found as a fact that Catherine D. McGrew was the trustee of the contents of the safe deposit box in the American Security and Trust Company and held the legal title to the contents of that box in trust for the benefit of John L. McGrew, as his interest in such contents may appear, and declared that John L. McGrew was the equitable owner of any and all of the contents of said box and held such equitable interest to be subject to the lien of the plaintiff's judgment.

2. It found as a fact that Catherine D. McGrew was trustee under the sale to her of the Buick automobile in question, and that she held the legal title to said

automobile in trust for John L. McGrew, and that said John L. McGrew is the equitable owner thereof, and held his equitable interest therein to be subject to the lien of the plaintiff's judgment.

3. It found as a fact that Catherine D. McGrew held legal title to premises, 3168 Eighteenth Street northwest, in trust for benefit of John L. McGrew, and that John L. McGrew is the equitable owner of said property. But the decree denied to plaintiff the relief sought in her bill with respect to such property, on the ground that the question presented had already been litigated between the plaintiffs to this cause and is *res adjudicata*.

4. The decree further provided that John L. McGrew be directed and required to pay and deliver to the receiver named and appointed in the decree "each and every month, until the further order of the court, the salary received by him as an employee of the United States Government, whatever it may be, in excess of one hundred dollars (\$100) each month, when and as said salary is received by him."

5. That Olive B. Lacy was appointed receiver with full power and authority to demand, collect and receive from the defendant when and as due, each and every month until the further order of the court, the salary received by him as an employee of the United States Government, whatever it may be, in excess of one hundred dollars (\$100) each month, when and as the said salary is received by the said John L. McGrew, and that said receiver is hereby authorized and em-

powered to open the safety deposit box hereinbefore described, and to report the contents thereof to the court, with authority to ask for leave to sell any and all of the contents of said box standing in the name of either said Catherine D. McGrew or John L. McGrew, or otherwise held by Catherine D. McGrew for the benefit of John L. McGrew; to take over and sell the automobile hereinbefore described, the proceeds of such sale to be applied to the satisfaction of the judgment aforesaid until said judgment should be fully paid.

It is from this decree the appeals to this Court have been prosecuted.

Assignments of Error.

1. The court erred in declaring the defendant Catherine D. McGrew to be trustee of the contents of the safety deposit box No. 6823 in the American Security and Trust Company.

2. The court erred in declaring that the defendant Catherine D. McGrew holds the legal title to the contents of said box in trust for the defendant John L. McGrew.

3. The court erred in holding the defendant John L. McGrew to be the equitable owner of the contents of said box and declaring the same to be subject to the lien of the plaintiff's judgment.

4. The court erred in not holding that plaintiff had a complete and adequate remedy at law with respect to said box and contents.

5. The court erred in holding that the defendant Catherine D. McGrew is a trustee under the sale to her by Stanley Horner, Inc., of the automobile described in the bill of complaint, and that she holds legal title thereto in trust for the benefit of the defendant John L. McGrew, and in holding that the defendant John L. McGrew is the equitable owner of said automobile, and declaring such equitable interest therein subject to the lien of plaintiff's judgment.

6. The court erred in holding that the defendant Catherine D. McGrew holds title to the premises, 3168 Eighteenth Street northwest, as trustee for the benefit of the defendant John L. McGrew, and that he is the equitable owner thereof.

7. The court erred in directing and requiring the defendant John L. McGrew to pay over to a receiver each and every month until the further order of this Court, the salary received by him as an employee of the United States Government, in excess of one hundred dollars (\$100.00) each month, when and as received by him.

8. The court erred in appointing a receiver and in conferring upon said receiver the powers and authority sought to be conferred in and by its decree.

9. The court erred in not dismissing plaintiff's bill.

'ARGUMENT.

I.

The court erred in holding that Catherine D. McGrew was trustee of the contents of the safe-deposit

box; that she holds the legal title to such contents in trust for John L. McGrew; that John L. McGrew was the equitable owner of the contents of said box, and that the same was subject to the lien of plaintiff's judgment; and in not holding that plaintiff had a complete and adequate remedy at law with respect to said box and contents.

These questions of law are raised by assignments of error numbers 1, 2, 3, and 4 (R., pp. 26, 27). As heretofore pointed out in this brief, the claim of the plaintiff with respect to this box and the contents thereof is, as set forth in paragraph 23 of the bill (R., p. 11), that John L. McGrew, conspiring with Catherine D. McGrew to conceal his assets and property, rented a box in the name of Catherine D. McGrew, and that at his request she entered into a written contract with the Trust Company for the rental of the box in her name, which contract gave right of access to the box to John L. McGrew. Upon information and belief, it was further alleged that the box contained moneys, stocks, bonds, notes, mortgages and other securities and evidences of indebtedness and things of value belonging to the said John L. McGrew.

These averments of the bill were denied under oath in the answer of the defendants.

The only testimony offered in support of the averments of the bill was the testimony of the Assistant Treasurer of the American Security and Trust Company, to the effect that on the 31st day of March, 1920, the box in question was rented in the name of Catherine D. McGrew; that it was the only box Mrs. McGrew

had; that John L. McGrew had no safe-deposit box; that the rental contract is still in force and written authority deputizing John L. McGrew to have access to the box is still in force (R., p. 36).

There was no testimony whatever offered as to the contents of the box.

It was upon this testimony alone the court held the plaintiff had sustained the burden of proof as against the sworn answer of the defendants respecting the allegations of the bill in so far as said box and its contents were concerned. We submit that the finding of the court completely emasculates the rule with regard to the burden of proof and that there is no evidence whatever in the record which justifies the finding of the court or its decree.

In addition to this, the record shows that the safe-deposit box in question and the contents thereof were at the time of the filing of the bill in this case and the trial of the case, under attachment levied upon them in the suit at law in which the said plaintiff obtained the judgment against John L. McGrew, which attachment was issued on the 8th day of February, 1923, and levied upon said safe-deposit box, and which attachment is still in full force and effect (R., p. 37).

The bill in this case was not filed in aid of that attachment, and, so far as the contents of the said box are concerned, they are still subject to the lien of that attachment and subject to the orders of the court in the suit at law in which the attachment was issued. It is clearly within the power of the court in that suit at law, upon a proper showing, to pass an order direct-

ing the opening of said box. This being so, the plaintiff has a complete and adequate remedy at law with respect to said box and its contents, and the court below was without jurisdiction to pass any decree respecting the same.

II.

The court erred in holding that **Catherine D. McGrew** is a trustee under the sale to her of the automobile described in the bill of complaint; that she holds legal title thereto in trust for the benefit of **John L. McGrew**, and that **John L. McGrew** is the equitable owner thereof, and that his equitable interest therein is subject to the lien of plaintiff's judgment.

The question here presented is covered by the fifth assignment of error (R., p. 27).

The charge of the bill respecting the automobile in question is that **John L. McGrew**, conspiring with **Catherine D. McGrew** to conceal his assets and property from his creditors, purchased the automobile in question in the name of **Catherine D. McGrew**, and that at his request, she paid one thousand and eight dollars (\$1,008) in cash and gave eight (8) deferred purchase-money notes for fifty dollars and ninety-one cents (\$50.91) each, which notes were subsequently paid by **Catherine D. McGrew** (paragraph 24, R., p. 11).

These averments of the bill were denied in the answer of the defendants under oath.

The only testimony offered in support of the allegations of the bill was the testimony of one **Duffey**, Vice-

President and Treasurer of Stanley H. Horner, Inc., who testified that the records of their firm showed that an automobile had been purchased in the name of Catherine D. McGrew, of 3168 Eighteenth Street, Northwest, on November 14, 1922; that it was a new Buick automobile. It was sold under a conditional bill of sale and the deferred purchase-money notes, payable monthly, were paid in eight months after the date of sale; that the contract showed the full price of the car and the monthly payments, but did not show who made the payments; that he had no knowledge of that (R., p. 35).

There was also offered testimony of one Deane, an employee of the License Bureau of the District of Columbia, to the effect that the Bureau in 1926 and 1927 issued a license to Catherine D. McGrew of 3168 Eighteenth Street, Northwest, as the owner of an automobile. Counsel for defendants admitted of record that the license issued to said Catherine D. McGrew in both 1926 and 1927 was for a Buick automobile purchased from Stanley H. Horner, Inc., in 1922 (R., pp. 35 and 36).

This testimony, it is respectfully submitted, utterly fails to establish the averments of the bill with respect to the purchase and ownership of the automobile in question, and forms no basis whatever for the finding of the Court below respecting said automobile, or its decree declaring the same to be the property of John L. McGrew, and directing its sale.

III.

The court erred in directing and requiring the defendant John L. McGrew to pay over to a receiver each and every month until the further order of this Court, the salary received by him as an employee of the United States Government, in excess of one hundred dollars (\$100) each month, when and as received by him (Assignment of Error No. 7, R., p. 27).

It is averred in the bill (paragraph 28, R., p. 13) that the salary of John L. McGrew, as an employee of the United States Government, cannot be reached through the ordinary processes of law, and unless a Receiver is appointed, to whom the said defendant shall be required by order of this Court to pay over his salary monthly in excess of one hundred dollars (\$100), as received, plaintiff will be without remedy to reach the said salary, and her judgment will be seriously endangered thereby.

In view of the decision of the Supreme Court of the United States in the case of *Buchanan vs. Alexander*, 4 How., 20, the defendants in their answer (paragraph 28, R., p. 21) admitted that the salary in question is not subject to attachment or other process in the hands of the United States, but they deny the *power* of the court to require the defendant to pay over the amount of his salary in excess of one hundred dollars (\$100), or the jurisdiction of the court to deal in this proceeding in any manner with the salary of the defendant.

In the *Buchanan* case, *supra*, the Court says:

“The important question is whether the money in the hands of the purser, though due the seaman for wages, was attachable. A purser, it would seem, cannot in this respect be distinguished from any other disbursing agent of the Government. If the creditors of these seamen may, by process of attachment, divert the public money from its legitimate and appropriate object, the same thing may be done as regards the pay of our officers and men of the Army and of the Navy; and also in every other case where the public funds may be placed in the hands of an agent for disbursement. To state such a principle is to refute it. No Government can sanction it. At all times it would be found embarrassing, and under some circumstances it might be fatal to the public service. The funds of the Government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by State process or otherwise, the functions of the Government may be suspended.” * * *

In the case of *Bank of Tennessee vs. Bebrell*, 35 Tenn., 379, in dealing with this question, it is said:

“Every consideration of public policy would forbid it. It would be very embarrassing generally and under some circumstances might prove fatal to the public service, to allow the means of support to the servants of a Government to be intercepted in the hands of disbursing agents. If funds of the Government thus specifically appropriated for the support and maintenance of its agents were allowed to be diverted by process of attachment in favor of

creditors or otherwise, from their legitimate object, the functions of the Government might be suspended. * * * It is the prevailing principle in all Governments that where private and public interests come in conflict, with proper exceptions, the latter must yield."

The same principle of public policy which forbids the sequestration of the salary of a Government employee in the hands of the Government by attachment or otherwise, would be equally applicable to the relief sought in the present case, for the appointment of a receiver and a decree of the Court directing a Government employee immediately, upon receipt of such salary, to pay it over to a receiver of the Court, would bring about the same evils that would result from the attachment or sequestration of the salary of that employee in the hands of the Government.

We believe we are safe in asserting that this is the first time in the history of the National Government that any court in the District of Columbia or elsewhere has undertaken to appoint a Receiver and direct that a Government employee pay to that Receiver the salary received by him as such employee, in excess of One Hundred Dollars (\$100) per month, immediately upon its receipt.

Aside from the questions of public policy involved as laid down by the decisions to which the Court's attention has been called, the defendants, by their answer, specifically raise the question as to the power of the Court to enter any such decree, and deny the existence of any such power. *The power of a Court to*

enter a valid decree or judgment, it is respectfully submitted, must necessarily be co-extensive only with its POWER to execute and enforce such decree or judgment.

In the instant case, we submit that under the law the Court below is without power to enforce this provision of its decree for two reasons:

First. Because the existence of future salary is a mere possibility and neither the creditor nor the Court could compel the debtor to work and earn such salary. This principle has been uniformly adhered to by the Courts of this country.

In 15 *Corpus Juris*, 1407, the rule is specifically stated as follows:

“Salary completely earned before the filing of the bill by performance of all services required to entitle the debtor thereto, may be subjected to the payment of his debts, although not payable when the bill is filed. *But unearned salary is not reachable*, since neither the creditor nor the Court could compel the debtor to work out his part of the contract and earn the salary for the use of the creditor; * * *.”

In *Tompers vs. Tompers*, 159 N. Y. S., 817, the court says:

“It seems to be settled that the plaintiff could not reach the defendant’s salary by means of a creditor’s suit, except to the extent that it had accrued at the time of the commencement of the action.”

To the same effect is the holding of the Court in the following cases:

Valentine *vs.* Williams, 159 N. Y. S., 815.

McCoun *vs.* Dorsheimer, 1 Clark, N. Y., 144.

Probably the leading case on this question is *Browning vs. Bettis*, 8 Page's Chancery Reports N. Y., 568. This was an appeal from the order of the Vice-Chancellor of the Fifth Circuit appointing a receiver upon a creditor's bill. The Vice-Chancellor directed Bettis, the judgment debtor, to execute to the receiver a general assignment of all the property, equitable interest or things in action, which he owned or was entitled to at the time of filing the complainant's bill. In reversing this decree the Court says:

“But the complainant had no right to reach by this bill the compensation to which the judgment debtor might thereafter become entitled under the laws of the United States, when he should have completed the census and made a return thereof to the Marshal.”

In making this decision the Court relied upon the case of *Woodworth vs. Gillespie*, 7 N. Y. Chan.

In the case of *Noonan vs. Stein*, 56 Colo., 76, the Court says:

“Neither can it (the fund in question) be reached by assuming that this action is in the nature of a creditor's bill, for the reason that a creditor's bill would not lie to reach assets of a debtor, which the debtor cannot recover in an action in his own name. (*Boute vs. Cooper*, 90 Ill., 440; *Nolling vs. National Bank*, 99 Va., 54; *Neckerly vs. Taylor*, 74 Nebr., 84; *Browning vs. Bettis*, 8 Page's Chancery, 568.)

“In *German National Bank vs. First National Bank*, 59 Nebr., 14, in commenting upon this question it was said: ‘This action,’ says counsel, ‘as it now stands, is an action on the part of a creditor to subject to its claim assets of a debtor not reachable by execution. This being the character of the case, it is evident the plaintiff’s rights are precisely the same as those of the Hardware Company. The plaintiff cannot succeed unless its debtor had an actionable demand against the appellant when the suit was instituted.’ ”

In the case of *Whiting vs. Ott*, 1 Weekly Law Bulletin, 335 (Ohio), the Court held that while a creditor’s bill will reach money earned or indebtedness existing, whether then due and payable or not, it will not lie to seize propectively on what is to be thereafter earned or to subject an indebtedness thereafter to arise.

In the case of *Baird vs. Dietz*, 11 Ky. Law Rep., 759, where it was attempted to attach for salary, it was held that there could be no attachment lien except as to salary earned at the institution of the suit.

In the case of *Boute vs. Cooper*, 90 Ill., 440, the Court says:

“We do not understand that the judgment creditors of Hinman had any greater right to the money than Hinman himself. A creditor, by filing a creditor’s bill, merely acquires a lien upon the assets of the debtor, existing when the bill is filed, and if such assets consist of accounts due or choses in action, if the debtor himself could not maintain an action for the recovery of the same, we are aware of no principle

upon which a judgment creditor could maintain a bill.”

The foregoing cases, we submit, conclusively hold that the salary of the defendant John L. McGrew is not reachable in this proceeding. A careful survey of the decisions of the courts of this country fails to disclose a case holding to the contrary.

Second. The decree in this case, in so far as it relates to the salary of the defendant, amounts to nothing more nor less than a decree directing the payment of money only. In other words, under the provisions of this decree, the moment that John L. McGrew receives his monthly salary from the United States Government, he must, under the mandate of this decree, immediately pay it over to the Receiver appointed by the court. Supposing he should refuse to make such payment, could the court below compel him so to do? To adjudge him guilty of contempt for failure to make the payment and commit him to jail would, we respectfully submit, be tantamount to imprisoning him for debt. But even this action on the part of the court is beyond its *power*, for by Section 113 of the Code, conferring upon the court below powers with respect to executing its decrees or compelling obedience to the same, it is expressly provided, “*but where a decree only directs the payment of money, no defendant shall be imprisoned except in those cases especially provided for.*” No authority in this jurisdiction, statutory or otherwise, can be shown empowering any court to imprison for failure to comply with a decree such as was entered by the court below in this case.

IV.

The court erred in appointing a receiver and in conferring upon said receiver the powers and authorities sought to be conferred in and by its decree.

This question is raised by the eighth assignment of error. We do not deem it necessary to argue this question, for if the court was not justified in making the decree it made with respect to the automobile, the safe-deposit box and contents, and the salary of John L. McGrew, it necessarily follows that the court did err in appointing a Receiver for the purposes and with the powers enumerated in its decree.

V.

The court erred in holding that Catherine D. McGrew holds title to the premises 3168 Eighteenth Street northwest, as trustee for the benefit of John L. McGrew, and that he is the equitable owner thereof, but did not err in holding that such property was not subject to the lien of plaintiff's judgment or in denying the relief prayed by the bill with respect to said property, on the ground that the question presented had already been litigated between the parties and was res adjudicata.

The questions here involved are covered by Assignments of Error 1 and 2 on the cross-appeal in No. 4799, and by Assignment of Error 6 in No. 4797.

We have already in this brief (p. 6) set forth fully the averments of the bill respecting the pur-

chase of premises 3168 Eighteenth Street northwest, the answer of the defendants denying the allegations of the bill, and the facts constituting the defense of *res adjudicata* set up by the defendants in their answer. Briefly, the defense of *res adjudicata* is based upon the facts that on the 15th day of January, 1923, Olive S. McGrew filed a certain other bill in equity against John L. McGrew and Catherine D. McGrew, claiming that Catherine D. McGrew was the holder of record of a certain interest in premises 3168 Eighteenth Street northwest, which interest she held for the benefit of John L. McGrew, who in equity was the real owner thereof. In and by said bill a decree was sought declaring said premises to be subject to the payment and satisfaction of plaintiff's judgment, and for the sale thereof and the application of the proceeds accordingly. Defendants answered said bill under oath, asserting absolute ownership of said property by Catherine D. McGrew, and denying that John L. McGrew had any interest, right or ownership therein. Thereafter the said cause came on for trial on its merits, the plaintiff offering testimony in support of the averments of her bill, and as a result of said trial the court, on the 12th day of November, 1924, entered its decree reciting that the cause was heard upon the pleadings and testimony, and was argued by counsel and submitted to the court; and after due consideration thereof dismissed the bill.

From this decree an appeal was prosecuted to this Court, and the decree appealed from was affirmed.

All of these facts appear in the record on appeal in case No. 4799, pages 4 to 30.

From these facts, which cannot be disputed, it is respectfully submitted that the decree of Mr. Justice Hoehling of November 12, 1924, was, and is, final and conclusive in so far as ownership by Catherine D. McGrew, of premises 3168 Eighteenth Street northwest, is concerned, and that question cannot again be litigated in this proceeding. The rule as to *res adjudicata* is clearly and succinctly stated in the opinion of this Court in the case of Nalle *vs.* Oyster, 36 App. D. C., 36. Mr. Justice Van Orsdel, in delivering the opinion of the court, stated:

“We understand the rule of *res adjudicata* to be that a judgment or decree rendered by a court of competent jurisdiction is conclusive not only upon all matters directly involved in the issue under consideration, but upon all matters properly put in litigation or that could have been adjudicated therein. ‘The plea of *res adjudicata* applies, except in special cases, not only to points upon which the court was required by the parties to form an opinion and pronounce a judgment, but to every point which properly belongs to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.’ *Beloit vs. Morgan*, 7 Wall., 619; L. Ed., 205.”

See also:

Bluthenthall vs. Bigbie Bros. & Co., 23 App. D. C., 209.

Blackford vs. Wilder, 28 App. D. C., 535.

The rule is thus stated by the Supreme Court of the United States:

“An adjudication is final and conclusive, not only as to the matters actually determined, but as to every other matter which the parties might have litigated and have decided as incident to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action, both in respect to matters of claim and of defense.”

The Haytian Republic, 154 U. S., 118, 129.

See also:

Cromwell *vs.* County of Sac, 94 U. S., 351, 352.

Aurora City *vs.* West, 7 Wall., 82, 102.

Dowell *vs.* Applegate, 152 U. S., 327.

Postal Telegraph Cable Co. *vs.* Newport, 247 U. S., 464, 476.

United States *vs.* California Bridge Co., 245 U. S., 337, 341.

Baltimore Steamship Co. *vs.* Phillips, 274 U. S., 316.

In the light of the facts of this case and the foregoing decisions, the action of the court below in sustaining the defendants' defense of *res adjudicata*, so far as the real estate involved in these proceedings is concerned, was undoubtedly correct.

But it is respectfully submitted that, from the testimony submitted in support of the averments of the bill respecting the same, there is no basis or justification for the finding of the court that Catherine D. McGrew is a trustee under the deed conveying such real

estate, and holds the legal title to said property in trust for the benefit of John L. McGrew, who is, by the decree, declared to be the equitable owner thereof (R., p. 25). This finding embodied in the decree, notwithstanding the adjudication of the court that the plaintiff is entitled to no relief respecting the same, constitutes a cloud upon the title, which might seriously hamper its alienation, irrespective of the fact that by the decree it is clearly and rightly determined plaintiff has no lawful claim thereto.

Conclusions.

It is respectfully submitted that so much of the decree appealed from as relates to the automobile in question and the safe-deposit box and its contents; and directed John L. McGrew to pay over to the receiver appointed by the court the salary received by him from the United States Government in excess of one hundred dollars (\$100) per month; the appointment of a receiver, and declares that Catherine D. McGrew holds title to premises 3168 Eighteenth Street northwest in trust for John L. McGrew, who is the equitable owner thereof, should be *reversed*; and that portion of said decree which sustains the defense of *res adjudicata* as to the real estate involved in these proceedings should be *affirmed*.

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(3880)

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

FOR MR. CHIEF JUSTICE MARTIN.

NOV 14 1928

Henry H. Hodges
clerk

In the Court of Appeals
OF THE DISTRICT OF COLUMBIA
APRIL TERM, 1928.

No. 4797.

JOHN L. MCGREW AND CATHERINE D.
MCGREW, APPELLANTS,

vs.

OLIVE S. MCGREW.

BRIEF FOR APPELLEE.

OLIVE B. LACY,
Attorney for Appellee.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1928.

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JOHN L. MCGREW AND CATHERINE D.
MCGREW, APPELLANTS,

vs.

OLIVE S. MCGREW.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

The appellants (hereinafter called defendants) are husband and wife, and the appeal is from a decree of the Supreme Court of the District of Columbia declaring that certain real and personal property standing in the name of the wife is held by her as trustee for the benefit of her husband, and that he is the equitable owner of the said property; declaring his interest in the said personal property subject to the lien of the judgment of appellee (hereinafter called plaintiff), providing for sale thereof, the proceeds to be applied toward the satisfaction of the judgment and costs; and appointing a receiver to collect the salary of the husband from him, monthly, as received, over and above his statutory exemption, and apply the same further toward the payment of the said judgment. The denial of similar relief as to the real estate is taken up in the cross appeal in this cause.

Salient facts, established at the trial either by admissions in the answer of defendants or by uncontradicted evidence on behalf of plaintiff, are:

That on February 15, 1916, when the indebtedness merged in the judgment was incurred, defendant John L. McGrew was the owner of two valuable pieces of real estate. That thereafter, on March 8, 1916, he exchanged one of his said properties for 1680 Irving Street N. W.; and on March 28, 1917, he exchanged the second property for 707 Twentieth Street N. W., both in said District. In the meantime, on January 3, 1917, he married the co-defendant. Four months thereafter, on May 26, 1917, he transferred, without consideration, both of said properties to his wife, his indebtedness to plaintiff being outstanding and represented by promissory notes the principal one of which had not matured. Thereafter he defaulted in the payment of the interest notes given plaintiff. Twenty-three days before the principal note matured, the date of maturity being February 15, 1919, defendants sold the Twentieth Street property. When the principal note matured, it was not paid. (Rec., 2-8, 17, 19, 20, 30, 31.)

On March 31, 1920, while a suit was pending against the husband on his said notes, a safety deposit box was rented in the name of the wife, and she deputized him to have access to it. The next day, April 1st, the Irving Street property was sold. On the 30th of the same month property 3168 Eighteenth Street, N. W., in said District, was purchased in the name of the wife. On November 14, 1922, after plaintiff's judgment had been secured and affirmed on appeal, a new Buick automobile was purchased in the name of the wife. (Rec., 36, 8, 20, 32, 35.)

On January 2, 1923, execution was issued on the said judgment and returned nulla bona. On the 25th of the same month certain writs of attachment were

issued on the said judgment, disclosing that the husband had no assets. (Rec., 2, 17, 33, 34.)

Uncontroverted evidence further showed that after the husband transferred his property to his wife in 1917, he represented to plaintiff, when she made inquiry of him about it, that there was nothing in the transfers for her to worry about; and further represented that his wife had a separate estate. Plaintiff testified that she had no knowledge of anything wrong in the transactions until defendants refused, in November, 1923, to answer the interrogatories filed in a judgment creditor's action, on the ground that they would be testifying against one another. (Rec., 31, 33, 34.)

Defendants admit in their answer that the husband, in 1921 when the judgment was obtained, and from then on, has received a salary not less than \$4,000 a year in the employ of the United States Government, and for some years last past has received \$4,800. Uncontradicted testimony at the trial, on behalf of plaintiff, showed that his wife, who was formerly Catherine Dalton of Cherrydale, Virginia, was a very poor woman before her marriage to him. (Rec., 12, 21, 29, 34.)

In addition to the property above set out, purchased in the wife's name, plaintiff testified she had found since filing the instant bill property had been purchased in the wife's name in Hollywood, Florida, and in Maryland on the Severn River. (Rec., 34.)

Uncontradicted testimony on behalf of plaintiff further established that absolutely nothing stands in the name of the husband. (Rec., 34, 37.)

The validity of the judgment was not disputed; nor that it was unpaid. (Rec., 3, 19.)

ARGUMENT.

The law and authorities are clear cut and decisive on the question of transfers of property to, or purchase of property, real or personal, in the name of a wife, when the husband is in debt, or insolvent.

Sec. 1120 of the Code provides:

“Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands or rents and profits issuing from the same, or in goods or things in action, and every charge upon the same, and every bond or other evidence of debt given, or judgment or decree suffered, with the intent to hinder, delay, or defraud creditors or other persons having just claims or demands of their lawful suits, damages, or demands, shall be void as against the persons so hindered, delayed or defrauded. . . . Provided further, That the question of fraudulent intent shall be deemed a question of fact and not of law.”

Sec. 1151 is as follows:

“Provided, That no acquisition of property passing to the wife from the husband after coverture shall be valid if the same has been made or granted to her in prejudice of the rights of his subsisting creditors.”

Defendants admit in their answer that defendant John L. McGrew owned certain valuable real estate, as alleged in the bill, when his indebtedness to plaintiff was incurred, and that while that indebtedness was unpaid he transferred said property to his wife; they deny that said conveyances, and later transactions and purchases in the name of the wife were for the purpose of hindering, delaying and defrauding creditors, or to avoid payment of the indebtedness to plaintiff. *But the burden was upon them to prove their contention,*

and they failed to do so. Evidence offered on behalf of plaintiff, without contradiction, established that the said conveyances to, and transactions in the name of the wife, were without consideration on her part. (Rec., pp. 30, 31, 29, 36, 37, 34.)

Defendants admit in their answer that after defendant John L. McGrew transferred his property, as aforesaid, to his wife, he defaulted in the payment of the notes given plaintiff. They further admit that after the said indebtedness was merged in the judgment, and execution was issued thereon, it was returned nulla bona; and that no part of the judgment has been paid.

In *Barber vs. Wilds*, 33 App. D. C., 150, this court said:

“ . . . Parties shall be held to intend the natural and probable consequences of their acts; and, therefore, when it appears from a conveyance that its inevitable consequence will be to hinder, delay or defraud creditors, the court must so hold, notwithstanding the denial of such intent by the parties to the conveyance.”

To the same effect are:

Thyson vs. Foley, 1 App. D. C., 182;
Evans vs. Bell, 49 App. D. C., 238;
Smith vs. Cook, 10 App. D. C., 487;
Clements vs. Moore, 6 Wall., 299.

Seitz vs. Mitchell, 94 U. S., 580, holds:

“In the case of a purchase after marriage, *the burden is upon the wife to prove distinctly that she paid for it with funds which were not furnished by the husband.* . . . In a contest between the creditors of the husband and wife, *there is, and there should be, a presumption against her which she must overcome by affirmative proof.*”

Numerous decisions are to the same effect:

Manning *vs.* Caruthers, 83 Md., 1.
 Stockslager *vs.* Mechanics' &c. Inst., 87 Md., 232.
 Kline *vs.* Kline's Creditors, 103 Va., 263.
 Levy *vs.* Winton, 30 W. Va., 554;
 Cramer *vs.* Cole, 72 N. J. Eq., 210.
 Keeny *vs.* Good, 21 Penna. St., 349, and others.

No affirmative proof was offered by the wife.

The joint answer of husband and wife to the bill of complaint sets up a denial merely "that at the time of said marriage the defendant Catherine D. McGrew had no separate estate."

If that were so, it is submitted it was within her power to prove it.

"To hold," the court said in the Seitz-Mitchell case, "that conveyances thus taken are sufficient to protect the property against creditors of an insolvent husband, would be making fraud both profitable and easy."

While the defendants were silent as to the separate estate of the wife, uncontradicted evidence offered on behalf of plaintiff proved that before her marriage to defendant John L. McGrew she was working in a store for her living; and it was established that for three years before her said marriage she was employed at Garfinckel's department store, this city, and received during that time between \$12 and \$13 a week. (Rec., pp. 29, 34, 36.)

Yet four months after her marriage, it was proved without contradiction, she acquired from her husband two properties alone, which in the three years following they sold their interest in for a minimum consideration of approximately \$18,000. For premises 3168 Eighteenth Street N. W., purchased in her name three years after marriage, a minimum consideration of \$11,000 was paid. (Rec., pp. 31, 32, 33.)

It is admitted in the answer of defendants that the husband has received \$4,800 a year for the past several years, and prior thereto, since 1921, not less than \$4,000.

In the face of such evidence, the answer of defendants, though under oath, denying simply that the wife had no separate estate before marriage, is not competent as an affirmative defense. (Seitz-Mitchell, *supra*.)

It is claimed by defendants (Assignments of Error 1-3, 5-6) the court erred in decreeing, under these circumstances, that the wife is a trustee holding the legal title to premises 3168 Eighteenth Street N. W., the automobile, and the contents of the safety deposit box, for the benefit of her husband, that he is the equitable owner of the said property, and that his equitable interest in the said personal property is subject to the lien of the plaintiff's judgment.

In view of the law and authorities, and the evidence, it is submitted the court had no alternative.

Defendants further claim with regard to said safety deposit box and its contents, that the court erred in not holding plaintiff had a complete and adequate remedy at law. (4th Assignment of Error.)

Plaintiff's bill alleged, and the answer of defendants admitted, as set out herein, recovery of the judgment, issue of *fi. fa.* and return of *nulla bona*. Plaintiff testified without contradiction at the trial, that "various garnishments were issued under her judgment to find whether defendant John L. McGrew had any assets." And again, that "absolutely nothing stood in the name of the defendant John L. McGrew;" and "that nothing has been paid on account of the judgment." (Rec., pp. 33, 34.)

This court, in *Weightman vs. Washington Critic Co.*, 4 A. D. C., 136, held in substance as follows:

A return of *nulla bona* makes a *prima facie* case that defendant has not sufficient property

on which execution can be levied, casting on defendant the burden of adducing evidence to the contrary; and a defendant claiming that complainant has not exhausted his remedies at law, and that attachment proceedings taken on the judgment have not been determined, must show these facts affirmatively, where the evidence of complainant makes a *prima facie* case of exhaustion of legal remedies.

It is admitted on the record that plaintiff has an attachment against the said box which is still in full force and effect.

But no affirmative evidence was offered at the trial by defendants to prove that plaintiff has a complete and adequate remedy at law, or to rebut the evidence submitted on her behalf to the contrary.

Defendants referred to the said attachment proceedings in their answer to the bill and made the same a part of said answer. In the said proceedings *defendant Catherine D. McGrew filed an affidavit of sole ownership of the contents of the said box.*

As this court further said in the *Weightman* case, *supra*, "*If there was anything substantial in these attachment proceedings, or anything fairly promising results . . . it was incumbent upon them to show it.*"

Having failed to offer affirmative proof at the trial in support of their contention, it is submitted the point is raised too late in this court.

Defendants further claim (7th and 8th Assignments of Error) the court erred in directing and requiring defendant John L. McGrew to pay over to a receiver each and every month until further order of the court, the salary received by him as an employe of the United States Government, in excess of \$100 each month, when and as received by him; and further erred in appointing a receiver and conferring upon the said receiver the powers and authority set out in the decree.

In R. C. L., Vol. 8, pp. 36-37, it is stated: Having found the facts set out in the bill of complaint to be proved and true, it is the duty of the court so to frame its decree as to secure to the plaintiff the relief to which those facts entitled her.

It is apparent that a 1923 model automobile, purchased in and used since 1922, has no present value. The contents of the safety deposit box, if any, are unknown.

It is admitted in the answer to plaintiff's bill that defendant John L. McGrew's salary of \$4,800 a year is not subject to attachment in the hands of the Government.

The present value of plaintiff's judgment is approximately \$12,000. And had the lower court not found that the relief prayed for with regard to the property 3168 Eighteenth Street N. W., was barred by the doctrine of *res judicata*, the relief allowed in respect of the salary of defendant John L. McGrew would still be necessary if plaintiff's judgment is to be satisfied.

The fact, brought out at the trial of the cause, that property has also been purchased in the name of the wife in Florida and in Maryland, emphasizes the extent to which defendants have gone to make it impossible for plaintiff to collect her judgment. (Rec., p. 34.)

This court, in *Wood vs. Grayson*, 16 A. D. C., at page 185, on an application for a receiver *pendente lite*, said: "The application for a receiver is addressed to the sound legal discretion of the court, to be exercised as an auxiliary to the attainment of the ends of justice."

In *Sage vs. Memphis &c. R. R. Co.*, 125 U. S., 361, in passing upon the appointment of a receiver, the Supreme Court said: "This was done because in the opinion of the court the appointment of a receiver was necessary 'to protect plaintiff's interests and rights.'

. . . Whether a receiver shall be appointed is always a matter of discretion, to be exercised . . . always with reference to the special circumstances of each case as it arises."

Such authority is upheld in *Grant vs. Phoenix Ins. Co.*, 121 U. S., 105; and in numerous other decisions.

Examination of the various cases cited by defendants in support of their contention, shows that they have no bearing on this case for the following reasons:

In the New York, Ohio, and Kentucky cases, the decisions are controlled by statute barring the particular relief sought.

Whereas there is no law in this jurisdiction prohibiting it.

The citation, on behalf of defendants, from 15 C. J., 1407, depends for its authority on the decisions just referred to.

In the cases of *Noonan vs. Stein*, 56 Colo., 76, and *Boute vs. Cooper*, 90 Ill., 440, the decisions were controlled by the fact that the money could not be reached because it was in the hands of parties having claims against the judgment debtor which were entitled to be set off against the amount.

In the two remaining cases—*Buchanan vs. Alexander*, 4 How., 20, and *Bank of Tennessee vs. Bebrell*, 35 Tenn., 379, the question was whether funds could be attached in the hands of Government agents.

Whereas it is conceded in this case that that can not be done.

It is further submitted that Sec. 113 of the Code of the District of Columbia, cited on behalf of defendants, has no application to this proceeding.

But assuming that it has, defendants claim the court could not compel defendant John L. McGrew to comply with its order, because to adjudge him guilty of contempt for failure to make the payment and

commit him to jail would be tantamount to imprisoning him for debt.

C. J., Vol. 13, p. 88, states: "An order of court committing a person to prison for contempt for failure to obey an order requiring him to *pay over a specific sum of money* or to deliver specific property found to be *in his possession or under his control* is not an infringement on the constitutional inhibition against imprisonment for debt."

To this effect is *Muller vs. Nugent*, 184 U. S., 1.

In *Moyers vs. Cummings*, 17 A. D. C., 269, this court, in discussing the same question, said: "It was not the collection of a debt by the summary process of attachment, *but the enforcement of an order of delivery that was clearly within the jurisdiction of a court of equity.*"

In 102 Fed., 117, the case of *In re Schlesinger*, the court said: "*The answer to this objection is that the order was not for the payment of a debt, but for the delivery . . . of the assets of his estate. . . . He is not indebted to the trustee.*"

To the same effect are:

Wartman vs. Wartman, 29 Fed. Case. No. 17,210 (Md.).

Samel vs. Dodd, 142 Fed., 68; and numerous other decisions.

In *Samel vs. Dodd*, supra, the court said: "Where the prisoner has the power to comply with the order, having the money or thing in question in his possession, he may, of course, be punished for his failure to surrender it, without conflict with any rule of law against imprisonment for debt."

No attempt is made to reach the salary of defendant John L. McGrew *until it is earned and paid over to him*. The decree gives the receiver power and authority "to demand, collect and receive from the defendant

John L. McGrew, each and every month, until the further order of this court, the salary received by him as an employe of the United States Government, whatever it may be, in excess of one hundred dollars, each month, *when and as said salary is received* by the said John L. McGrew." And there is a corresponding order on the said defendant to "pay and deliver to the receiver" such salary, under the conditions above set out.

Argument is not needed to show that after the salary is paid into the hands of the said defendant, the court has authority to enforce its order. The Supreme Court has specifically upheld such authority.

In *Price vs. Forrest*, 173 U. S., 410, a receiver had been appointed to collect from the judgment debtor a fund which was to be paid to him by the United States Government, and apply the same to the satisfaction of the judgment debt, with an order on the said debtor to endorse the draft over to the receiver. Later a further order was made directing the said debtor to consent in writing that the balance of the fund to be paid by the Government should be paid to the receiver. The action was upheld. Part of the said fund was for salary due Price.

In *Teeter vs. Williams*, 42 Ky., 562, 39 Am. Dec., 485, it was decided that the plaintiff, by the aid of the chancellor, could attach whatever might be due his debtor for labor already performed, and he might attach whatever might become due upon an existing contract for his future labor.

"If the defendant has already received a county order," the court said in *Singer &c. vs. Wheeler*, 6 Ill. App., 225, "the court may require him to surrender it to the receiver, if he has drawn the money, and has it in his possession, or in the possession of a third person, it can be reached. *But it would be absurd to say*

that a debtor with the money in his pocket, should be excused from paying his creditor, because his money happened to have been earned by him as a public officer."

In *Knight vs. Nash*, 22 Minn., 453, the Supreme Court of Minnesota held: "A debt due from a municipal corporation to a judgment debtor, even though denied by the corporation, may be reached by a final order upon disclosure, directing the transfer of the claim, and appointing a receiver to collect it for the benefit of the creditor. The rule that a debt due from a municipal corporation can not be reached by process of garnishment has no application to an order of this character."

In *Riggin vs. Hilliard*, 56 Ark., 476, 20 S. W., 402, the court, in discussing the fact that a county could not be sued, recognized the doctrine to be that a county is not subject to garnishment. But it held that in equity the claim of an insolvent creditor of the county could be subjected to his debts. The court said: "That can be accomplished by proper orders of the court. . . ." And again: "The remedy is allowed in no case where it is adjudged that the public will be injuriously affected. It follows that relief should be granted to the plaintiff unless public policy intervenes in some way. . . ."

As to the public policy exemption rule, in R. C. L., Vo. 12, page 802-803, it is stated: "Considerable difficulty is encountered in attempting to determine exactly what persons are to be regarded, for this purpose, as public officials or employees."

In 29 Cyc., page 1366, is the following: ". . . It has been held that as a result of the provision in the National Constitution regulating the appointment of officers, no person in the United States Government service is an officer who has not been appointed by the President and confirmed by the Senate, or appointed by the President alone, one of the United States Courts,

or the head of an executive department. . . .”

There is nothing in the record to indicate that defendant John L. McGrew is a public officer within the meaning of the public policy exemption rule. The record indicates, and it is his admission, that he is an employe, merely, in the Bureau of Internal Revenue.

It might be added that, by analogy, pension money after it reaches the debtor is not exempt, and land purchased therewith, the title to which is fraudulently taken in the name of the pensioner's wife, may be reached by a creditor's bill. (15 C. J., p. 1405.)

Falkenburg *vs.* Johnson, 102 Ky., 543; 44 S. W., 80.

John *vs.* Elkins, 90 Ky., 163, 13 S. W., 448.
(Cited in R. C. L.)

In the latter case, the court said: “Sec. 4747 of the Rev. Sts. of the U. S. provides: ‘No sum of money due, or to become due, to any pensioner shall be liable to attachment, levy or seizure by or under any legal or equitable process whatever, whether the sum remains with the Pension Office, or any officer or agent thereof, or is in the course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner.’ It has been repeatedly decided by this court that *after the money reaches the hands of the pensioner it is no longer exempt.* Robion *vs.* Walker, 82 Ky., 60; Hudspeth *vs.* Harrison, etc., 6 Ky. Law Rep., 304.”

The principles laid down in the cases above cited, it is submitted, amply support the action of the trial court in appointing a receiver to collect a stipulated part of defendant John L. McGrew's salary *after it has been paid into his hands*, for the purpose of applying it toward the satisfaction of plaintiff's judgment, and the corresponding order on him to pay the said salary

over to the said receiver. Such action is "an auxiliary to the attainment of the ends of justice" within the meaning of this court in *Wood vs. Grayson*, *supra*; and the order is within the power of a Court of Equity to enforce.

Defendants further claim that the court erred in not dismissing plaintiff's bill (9th Assignment of Error).

The Statute of Limitations is pleaded by defendants in their answer to the bill (Rec., p. 23), although argument is not offered in support of this defense in the brief filed on their behalf.

Defendants allege, in their answer to the bill (Rec., p. 19), that the matters and things set forth in the bill were matters of record and at all times readily accessible to plaintiff had she sought to make inquiry with respect to them; and that any cause of action which she may have had by reason of the continuing conspiracy alleged to have been entered into in 1917, did not accrue within three years next preceding the filing of her bill, and is therefore barred by the Statute of Limitations. (Rec., p. 23).

Attention is directed to plaintiff's testimony that defendant John L. McGrew stated there was nothing for her to worry about in the transfers of his property to his wife in 1917; his further representation that his wife had a separate estate, and that she had paid a consideration for the property. (Rec., pp. 31, 33, 34.)

Public records are constructive notice to plaintiff of their contents only where defendants have not been guilty of any affirmative acts of deception to prevent suspicion and inquiry. (*Loring vs. Palmer*, 118 U. S., 321.)

The Supreme Court has held that if plaintiff is misled or lulled into security, or prevented or discouraged from ascertaining the facts by misrepresentation, concealment or other fraudulent conduct of defendants,

she is not chargeable with laches for failure to proceed during such period.

Loring *vs.* Palmer, *supra*.

Bailey *vs.* Glover, 21 Wall., 342.

Badger *vs.* Badger, 2 Wall., 87; and numerous other decisions.

In Lant *vs.* Manley, 75 Fed., 627, it was held the fact that "conveyances of land were matters of public record, did not put a creditor of the grantor on notice that there was no real consideration."

The testimony of plaintiff at the trial was that because of the said representations of defendant John L. McGrew, she did not know, until defendants refused to answer her interrogatories in the judgment creditor's action in 1923, that there was anything "curious" about it; that then she knew they must have "resorted to fraud and did not dare to come before the court and tell the truth. *That came to her knowledge about the middle of November, 1923.*"

The Supreme Court has held, in suits in equity where relief is asked on the ground of fraud, especially if the fraud has been concealed, that time will not run in favor of the defendant until the discovery of the fraud.

Kirby *vs.* Lake Shore, etc., Railroad, 120 U. S., 130.

Meader *vs.* Norton, 11 Wall., 442.

Prevost *vs.* Grantz, 6 Wheat, 481.

Rosenthal *vs.* Walker, 111 U. S., 185; and numerous other decisions.

The instant suit was filed on November 3, 1926, which, it is submitted, is a substantial compliance with the statute.

Plaintiff further testified that after defendants re-

fused to answer her interrogatories she "made every possible effort to learn the facts," and again, that she was "absolutely unable to find out anything in regard to that separate estate they were claiming, and had been unable to" until within the year prior to the filing of the instant suit. (Rec., pp. 33, 34.)

The Supreme Court, in *Brown vs. Co. of Buena Vista*, 95 U. S., 157, following *Sullivan vs. Portland, etc., R. R. Co.*, 94 U. S., 806, held: "A court of equity applies the rule of laches according to its own ideas of right and justice. Every case is governed chiefly by its own circumstances."

Under the circumstances in this case it is submitted defendants are not entitled to complain of delay; and further, that a strict compliance with the statute is not required.

In *Gallihier vs. Caldwell*, 145 U. S., 368, the Supreme Court said: ". . . It is unnecessary to multiply cases. They all proceed upon the theory that laches is not like limitations, a mere matter of time; but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relations of the property or the parties."

To the same effect is *Halstead vs. Grinnan*, 152 U. S., 412.

In *Alsop vs. Riker*, 155 U. S., 448, the Supreme Court said: "The length of time during which a party neglects the assertion of his rights, which must pass in order to show laches, varies with the peculiar circumstances of each case, and is not, like the matter of limitations, subject to an arbitrary rule. It is an equitable defense, controlled by equitable considerations, and the lapse of time must be so great, and the relations of the defendant to the rights such, that it would be inequitable to permit the plaintiff to now assert them."

To the same effect are the following cases:

Penn Mut. &c. Co. *vs.* Austin, 168 U. S. at 698.
 Townsend *vs.* Vanderwerker, 160 U. S., 131.
 So. Pac. Co. *vs.* Bogert, 250 U. S., 483; and
 numerous other decisions.

In the instant case *the records disclose that defendants have not been put in any worse position by the delay; that their relations to the plaintiff's rights have not changed to their detriment; that rights of third parties are not involved; and that defendants have not only contributed to, but are responsible for the delay of which they complain.*

Furthermore, in a case of continuing fraud, such as plaintiff established by uncontradicted evidence, the Supreme Court has held that the court should be "satisfied with no evidence of laches that did not amount to proof of assent or acquiescence."

McIntyre *vs.* Pryor, 173 U. S., 38 (D. C.).
 Saxlehner *vs.* Eisner, 179 U. S., 19.

The defense of laches, it is submitted, is without merit.

Finally, as to the contention of defendants (P. 23, Brief, Sec. V), that the court did not err in holding that the property 3168 Eighteenth Street N. W., was not subject to the lien of plaintiff's judgment, plaintiff respectfully refers the court to her brief in the cross appeal in this cause, No. 4799, to support her contention that *the doctrine of res judicata has no application whatsoever to this action, and that the relief sought in respect of the said property is not barred by the said doctrine; that the trial court having decreed, as a finding of fact, that defendant John L. McGrew is the equitable owner of the said property, plaintiff should have the relief sought.*

It is respectfully submitted that the decree appealed from is supported by the law, and the authorities in this

jurisdiction and elsewhere, and should be affirmed *except* as to the last clause of the third paragraph thereof, regarding property 3168 Eighteenth Street N. W., which provides that "the relief prayed for in said bill of complaint, as to this property, is denied on the ground that the question presented has been already litigated between the parties to this cause and is res judicata." On this point, as stated, argument is submitted on behalf of plaintiff in her brief in the cross appeal herein, No. 4799.

OLIVE B. LACY,
Attorney for Appellee.

FOR MR. CHIEF JUSTICE MARTIN.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

OCT 23 1928

Henry F. Hodges

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1928.

No. 4799.

OLIVE S. MCGREW, CROSS-APPELLANT,

vs.

JOHN L. MCGREW AND CATHERINE D. MCGREW.

CROSS-APPEAL FROM THE SUPREME COURT OF
THE DISTRICT OF COLUMBIA.

BRIEF FOR CROSS-APPELLANT.

OLIVE B. LACY,

Attorney for Cross-Appellant.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1928.

No. 4799.

OLIVE S. MCGREW, CROSS-APPELLANT,

vs.

JOHN L. MCGREW AND CATHERINE D. MCGREW.

**CROSS-APPEAL FROM THE SUPREME COURT OF
THE DISTRICT OF COLUMBIA.**

BRIEF FOR CROSS-APPELLANT.

Statement of the Case.

This cross-appeal is from that part of a decree of the Supreme Court of the District of Columbia which denies the relief prayed for in the Bill of Complaint as to property 3168 Eighteenth Street N. W., in said District, in a suit instituted by cross-appellant (hereinafter called plaintiff) against appellees (hereinafter called defendants), on the ground that the question presented has been already litigated between the parties to the cause and is *res judicata*.

The facts, for the purposes of this cross-appeal are, that on January 15, 1923, in the Supreme Court of the said District, plaintiff filed a judgment creditor's bill against the defendants, who are husband and wife,

based upon a judgment recovered on March 30, 1921, by plaintiff against defendant John L. McGrew, seeking discovery and disclosure of the interests of each, respectively, in premises 1680 Irving Street N. W., and 3168 Eighteenth Street N. W., both in said District. Interrogatories were filed by plaintiff to be answered by each of the defendants. They respectively filed objections upon the principal ground, among others, that the same required them to testify against one another and to disclose confidential communications between them as husband and wife. Their objections were sustained by this Court on special appeal by defendants from an interlocutory order of the said Supreme Court overruling said objections. The cause was remanded to the Court below, and thereafter came on for trial. Defendants were called by plaintiff as her witnesses, questions in line with the interrogatories were propounded to them. To each of which defendants respectively objected on the aforesaid grounds. Their objections were sustained by the lower court in accordance with the decision of this Court on the special appeal, and the bill was dismissed. Plaintiff thereupon appealed, bringing the question back to this Court, and asking, for argument in support of her assignment of errors, that the brief submitted on her behalf in the special appeal, be considered. The decree of the lower court was affirmed. Thereupon, on advice of counsel, plaintiff petitioned for a writ of certiorari. The writ was refused June 5, 1926.

On November 3, 1926, plaintiff within the year prior thereto having acquired information which would enable her to lay the facts regarding which discovery had been sought in the prior suit, before the Court, filed this suit. Upon hearing, the decree of the Court was favorable to plaintiff on all points except, as aforesaid, the relief prayed for as to property 3168 Eighteenth

Street N. W.; the Court finding as a fact that the defendant John L. McGrew is the equitable owner of the said property.

Assignments of Error.

Two assignments of error were filed, as follows:

1. The Court erred in not holding that the equitable interest of the defendant John L. McGrew in premises 3168 Eighteenth Street N. W., is subject to the lien of the plaintiff's judgment.

2. The Court erred in denying the relief prayed for as to the said property on the ground that the question presented had been already litigated between the parties to this cause and was *res judicata*.

ARGUMENT.

The sole question raised by this cross-appeal is whether the relief prayed for regarding property 3168 Eighteenth Street N. W., is barred by the decree in the former suit so that plaintiff may not have her judgment satisfied, in so far as may be possible, from the proceeds of a sale of said property.

To determine this, it is necessary to find what conditions must prevail for the doctrine of *res judicata* to apply.

The decisions of the Supreme Court outline these conditions.

First: There must be identity in the thing sued for;

Second: There must be identity of the cause of action;

Third: There must be identity of persons and parties to the action;

Fourth: There must be identity of the quality in the persons for or against whom the claim is made;

Fifth: The decree in the former cause must be upon the merits.

Cromwell *vs.* Sac, 94 U. S., 351;
 So. Pac. R. R. Co. *vs.* U. S., 168 U. S., 1;
 Vicksburg *vs.* Henson, 231 U. S., 259;
 United Shoe Machinery Corp. *vs.* U. S., 258
 U. S., 451;
 Lyon *vs.* Mfg. Co., 125 U. S., 698;
 Durant *vs.* Essex Co., 7 Wall., 107;
 New Orleans *vs.* Citizens Bank, 167 U. S., 371;
 Troxell *vs.* Del. etc., R. Co., 227 U. S., 434;
 Brandon *vs.* Ard, 211 U. S., 11;
 and numerous other decisions.

And there must be a concurrence of all five of these conditions.

The Supreme Court has said further that every decree in an equity suit must be considered in connection with the pleadings when this defense is raised. (Vicksburg *vs.* Henson, *supra.*)

Conceding the existence of the first, third and fourth conditions, attention is invited to the second—*There must be identity of the cause of action.*

“If pleadings present several distinct propositions of fact,” the Court said in Hooker *vs.* Hubbard, 102 Mass., 245, “the judgment is not conclusive upon any one of them unless it appears from the record or aliunde that the issue upon which it was rendered was upon *that* proposition.”

Again, in New Orleans *vs.* Citizens Bank, *supra.*: “Estoppel exists when the question upon which the second demand depends has under identical circumstances and conditions been previously concluded by a judgment between the parties or their privies.”

“The doctrine of *res judicata* is grounded in estoppel, and it is not the recovery, *but the matter alleged by the*

party, and upon which the recovery proceeds which creates the estoppel." 15 R. C. L., p. 953; *McComb vs. Frink*, 149 U. S., 629; *Outram vs. Morewood*, 3 East, 346.

What matters were alleged in the judgment creditor's suit filed in 1923, which would conclude the plaintiff in this action?

In that suit plaintiff sought to reach the interests, if any, of defendant John L. McGrew in the two properties already mentioned, namely 1680 Irving Street N. W., and 3168 Eighteenth Street N. W. The Bill alleged that defendant Catherine D. McGrew was the holder of record of each of those properties; that plaintiff did not know and therefore could not state her exact interest in them; that she believed she held them for the benefit of defendant John L. McGrew. There was no allegation even that plaintiff had been informed that defendant Catherine D. McGrew held this property for the benefit of her co-defendant; there was no allegation as to her separate estate. There was no allegation of fraud.

The Bill prayed for discovery and disclosure, and that the said properties might be sold and the proceeds applied toward the satisfaction of plaintiff's judgment.

But, necessarily, this relief was dependent upon discovery.

Interrogatories to be answered by each defendant, were filed.

Defendants filed answers under oath denying that defendant John L. McGrew had any interest in the Eighteenth Street property, and alleging that his co-defendant was the absolute owner of the said property; their answers revealing that the other property mentioned in the Bill had been disposed of, and denying that he had any interest in that.

Objections were filed by each defendant to the interrogatories.

Under the law in this jurisdiction (94 U. S., 580), such answers are insufficient where a judgment creditor is opposed to a man and his wife, and no affirmative proof is offered.

But the pleadings did not raise a *distinct* issue. Plaintiff's action was predicated upon discovery and disclosure. The Bill and interrogatories leave no doubt that she had no knowledge of the facts.

In view of Section 1068 of the Code of the District of Columbia this Court, on special appeal by defendants from an interlocutory order of the Supreme Court overruling their said objections, held that they could not be compelled to disclose the facts. And their objections were sustained.

This adjudication on the interrogatories, holding that defendants could not be compelled to testify, was the basis of the decree of dismissal, as will appear later herein.

The Supreme Court has held in *U. S. vs. Moser*, 266 U. S., 236, that it is where a right, question or fact has been "*distinctly* put in issue and directly determined" that it can not be disputed in a subsequent action. And this is the general principle laid down in *So. Pac. R. R. Co. vs. U. S.*, *supra*.

Compare the matters alleged in the instant Bill.

Plaintiff alleges, inter alia, a conspiracy to defraud on the part of defendants, entered into in 1917 and continued to date, that her allegation results from investigation on her part completed, after much difficulty, in the year prior to filing her Bill. The Bill specifically charges that defendant John L. McGrew owned certain valuable real estate when his indebtedness to plaintiff was incurred; that the said real estate was subsequently exchanged for properties 707 Twentieth

Street N. W., and 1680 Irving Street N. W., both in said District; that in 1917 both of said properties were transferred, without consideration, to the co-defendant Catherine D. McGrew, while the indebtedness to plaintiff was unpaid, for the express purpose of defrauding plaintiff; that the sale of the Twentieth Street property on January 24, 1919, twenty-three days before plaintiff's principal note matured, the sale of the Irving Street property on April 1, 1920, and the purchase of premises 3168 Eighteenth Street N. W., on April 30, 1920, in the name of the co-defendant while a suit by plaintiff was pending against defendant John L. McGrew on his notes, were to put beyond reach the property of defendant John L. McGrew for the purpose of delaying, hindering and defrauding his creditors and to evade payment of his indebtedness to plaintiff; that the co-defendant had no separate estate when she married the said John L. McGrew; that the latter in 1921, when the judgment was obtained against him, and since, in the employ of the United States Government, has received not less than \$4,000 a year, and for some years last past has received \$4,800 yearly; that everything has been transferred to his co-defendant for the purpose of rendering him insolvent, and to prevent plaintiff enforcing her judgment; that no part of said judgment has been paid. Her bill prays, inter alia, that the co-defendant Catherine D. McGrew be declared to be a trustee under the deed conveying the Eighteenth Street property to her, and to hold the legal title to the said property in trust for the benefit of defendant John L. McGrew, and that his interest in the said property may be sold and the proceeds applied toward the satisfaction of plaintiff's judgment, etc.

The joint answer of defendants on the points involved, admits defendant John L. McGrew owned property

as alleged, when his indebtedness to plaintiff was incurred; and admits all conveyances except with reference to the Eighteenth Street property, which it denies in toto, although it is stated in the 27th paragraph of the answer that the co-defendant, Catherine D. McGrew, is the owner of the said property, and that defendants occupy it as their home; lack of consideration is denied; the answer further denies that the co-defendant had no separate estate when she married the said John L. McGrew, and it admits the allegations as to the employment and salary of defendant John L. McGrew; the validity of the judgment is not disputed, and it is admitted that no part of it has been paid. The conspiracy to defraud is denied, and all allegations of fraud. Laches and res judicata are pleaded.

Thus, clearly, the matters alleged in the two suits are not the same.

If there was presumption of fraud in the former suit, it was not conclusive, but was subject to proof.

In *Packet Co. vs. Sickles*, 5 Wall., 580, the Supreme Court said: "To render the judgment conclusive, it must appear by the record of the prior suit that the particular matter sought to be concluded was necessarily tried or determined—that is, *that the verdict in the suit could not have been rendered without deciding that matter* or it must be shown by extrinsic evidence, consistent with the record, that the verdict and judgment necessarily involved the consideration and determination of the matter."

Obviously, it could not be contended that the decree in the 1923 suit finally adjudicated the facts relating to the Eighteenth Street property, when, from the nature of that action, and the record of the proceeding, the facts were not before the court.

The Supreme Court has further said, *Russell vs.*

Place, 94 U. S., 606: "If, upon the face of the record, anything is left to conjecture as to what was involved and decided, there is no estoppel when it is pleaded and nothing conclusive when it is offered in evidence."

And in *Vicksburg vs. Henson*, supra, that court said: "It is undoubtedly true that a right, question or fact put in issue and decided by a court of competent jurisdiction must be taken as settling the rights of the parties in respect to such controversy and while it remains undisturbed is conclusive between them. The enforcement of this rule has been repeatedly said to be essential to secure the peace and repose of society and in order that an end may be made of controversies between parties who have once invoked and have had the determination by a competent judicial tribunal of the matters in dispute between them. *It is no less true that to hold upon any unsubstantial ground that a controversy has been thus concluded is to do an injustice to litigants. We must therefore be careful to see, when the contention of former adjudication is made, that the matter was actually presented and decided and the rights of the contending parties thereby concluded.*"

Consider the fifth condition, that *the decree in the former case must be upon the merits.*

To the same effect as the decisions previously cited, on this point, are:

Hughes vs. U. S., 4 Wall., 232;
U. S. vs. Nourse, 9 Pet., 8;
U. S. vs. Moser, above cited on other points;
Fayerweather vs. Ritch, 195 U. S., 276;
 and numerous other decisions.

R. C. L., vol. 15, page 955, states: ". . . In order to be conclusive as an estoppel, or as a bar under the doctrine of *res judicata*, the general rule is that a judgment must have been rendered on the merits of

the case. *If the real merits of the suit are not determined in the prior decision the judgment will not be a bar.*" (Citing in support of the rule, *Swift vs. McPherson*, 232 U. S., 51.)

As to what constitutes a judgment on the merits, in *Freeman on Judgments*, is the following:

" . . . Difficulty may arise in deciding what is judgment on the merits, as the term is generally employed by judges and lawyers. To create such a judgment, it is by no means essential that the controversy between the plaintiff and defendant be determined 'on the merits,' in the moral or abstract sense of those words. (Sec. 723.)

" . . . It is further important to note that the term 'merits' may be used in two senses even though the moral or legal correctness of the judgment be disregarded. *It may refer to the merits of the whole case or controversy between the parties, or it may be restricted to the merits of some particular issue of law or fact, the adjudication of which may prevent a consideration and determination of the substantial rights of the parties upon the whole controversy.* There is no doubt about the conclusiveness of the judgment as to the merits actually adjudicated even though it is a judgment on the merits only in the latter restricted sense. . . . But *to operate as a merger or bar of the whole claim or cause of action, the adjudication must have been on the merits in the former broader meaning of the term, and this is the sense in which it is commonly used in applying the rule requiring the judgment to be on the merits.*" (Sec. 724.)

By reference to the Statement of the Case herein, it will appear that the former case turned on whether the defendants could be compelled to testify and disclose the facts. That question was brought to this court on special appeal on the objections to the interrogatories, and adversely decided. On dismissal of

the bill following a hearing, when the lower court, in accordance with the decision of this court on the special appeal sustained objections of defendants to questions propounded to them, another appeal was taken and the same question was again brought to this court. And on adverse decision, an attempt was made to have it passed upon by the Supreme Court. That question, it is contended, was the only one finally adjudicated in the former suit.

Black, in his work on Judgments, Sec. 614, says: ". . . . The more correct doctrine is that estoppel covers the point which was actually litigated, *and which actually determined the verdict and findings*, whether it was statedly and technically in issue or not."

To the same effect is Bigelow on Estoppel.

In the light of the above, consider the evidence submitted at the two hearings, respectively, taking the instant suit first.

Plaintiff testified, inter alia (See Transcript of Record in appeal No. 4797, pages 29-34) that she did not testify at the former hearing because she could not get the facts at that time; that she heard of the transfers of properties 707 Twentieth Street N. W. and 1680 Irving Street N. W., to the co-defendant Catherine D. McGrew sometime in 1917, after defendant John L. McGrew had defaulted in his interest notes; that she made inquiry of him about it, and he admitted making the transfers, but claimed there was nothing for her to worry about in them; that she knew nothing about the consideration that had passed for the property at the time. That she did not learn of the sale of the Twentieth Street property until sometime in 1919, after his default in the principal note; that she learned of the sale of the Irving Street property through the affidavits defendants filed in answer to the judgment creditor's bill. That she learned of the purchase of

the Eighteenth Street property sometime in 1920, while her suit was pending against defendant John L. McGrew for judgment on his notes. That at the time she heard of these sales of property, and the purchase of the Eighteenth Street property, she believed, from the representations of the defendant John L. McGrew that the co-defendant had a separate estate. Because of the said representations, she did not know, until defendants refused to answer the interrogatories in her judgment creditor's suit, in November, 1923, that there was anything curious about it. That she was absolutely unable to find out anything in regard to the co-defendant's separate estate and had been unable to until within the year prior to the filing of the instant suit. She then learned that before her marriage to defendant John L. McGrew she was a very poor woman, working in a store for her living. Other evidence established that the co-defendant had been employed in Garfinckel's department store, this city, for three years before her said marriage in 1917, and had earned during that time only between \$12 and \$13 a week. Certified deeds were offered in evidence covering, among other properties set out in the bill, the transfers of the aforesaid two properties to the co-defendant in 1917, to show, in conjunction with other evidence as above, that no consideration passed, and for the purchase of the said Eighteenth Street property in her name in 1920, to prove that the purchase price, which certified releases of trusts offered in evidence indicated had been paid in full, was approximately, at a minimum, \$11,000. Further testimony offered on behalf of plaintiff showed that absolutely nothing stood in the name of defendant John L. McGrew.

No testimony whatever was offered by defendants to controvert the plaintiff's case. The record of the 1923 suit was offered in evidence.

At the hearing in the former suit (See Transcript of Record in this cross-appeal No. 4799, pages 21-30), the only testimony offered on behalf of plaintiff was that of Gladys E. McGrew (now Mrs. Apple), plaintiff's daughter, as to what her father, defendant John L. McGrew, had told her regarding the exchange of his Virginia land (property owned when the indebtedness to plaintiff was incurred) for the Wentworth Apartment, known as 707 Twentieth Street N. W., and the transfer of the last named property to his wife, the co-defendant. The record of the suit in which plaintiff obtained her judgment, and certain deeds, were offered in evidence. Plaintiff then called as her witnesses each of the defendants. Questions in line with the interrogatories were put to each respectively. To each question, as asked, defendants severally objected by their counsel upon the ground that to answer the same would make the defendant a witness against the co-defendant, and that the object of the question was to elicit from the witness testimony against the co-defendant, and on the further ground that this court had already held (on special appeal by defendants from the ruling of the Supreme Court on their objections to the interrogatories) that defendants could not be compelled to answer. As to each question, the court sustained the said objection and declined to permit the witness to answer the same.

And the bill was dismissed, and an appeal taken, as previously stated, on the ruling of the court in sustaining the said objections of defendants and not requiring them to answer the questions; and the same brief submitted to this court by plaintiff on the special appeal, was again submitted—confirming plaintiff's contention that it was the merits of this particular issue of law, and not the merits of the whole case, which the court finally adjudicated in the former action.

As to public records of conveyances of property offered in evidence, numerous decisions are to the effect that such records do not put a creditor of the grantor on notice that there was no real consideration:

Lant vs. Manley, 75 Fed., 627;
Loring vs. Palmer, 118 U. S., 321.

Therefore, in an action predicated upon discovery, where defendants refused to disclose the facts, such evidence should not be conclusive upon plaintiff in a second suit.

It is submitted the adjudication that the defendants could not be compelled to testify prevented a "consideration and determination of the substantial rights of the parties upon the whole controversy." (Freeman on Judgments, *supra*.)

In *Swift vs. McPherson*, *supra*, the Supreme Court has held that such an adjudication is not a bar to a second action.

Looking at the wording of the decree in the former suit, it will appear that it is general in its terms, and, also, without qualifying words:

"This cause coming on to be heard at this term upon the pleadings and testimony the same was argued and submitted to the court. It is thereupon, after due consideration thereof, by this court and the authority thereof, this 12th day of November, 1924, adjudged, ordered and decreed that the bill of complaint be and the same is hereby dismissed, with costs.

"By the court.

A. A. HOEHLING,
Justice."

The Supreme Court has said: "It is elemental that if from the decree in a cause there be uncertainty as to what was really decided, resort may be had to the

pleadings and to the opinion of the court in order to throw light upon the subject."

Nat'l F'dry &c *vs.* Oconto Water Supply Co.,
183 U. S., 216;

Last Chance Mining Co. *vs.* Tyler Mining Co.,
157 U. S., 683;

Baker *vs.* Cummings, 181 U. S., 117.

No opinion was filed by the court.

In *Swift vs. McPherson*, *supra*, the Supreme Court said: "While there may be a presumption that a dismissal in equity without qualifying words is a final decision on the merits, that presumption of finality disappears when the record shows that the court did not pass upon the merits but dismissed the bill on any ground not going to the merits."

And that, it is submitted, was the situation in the former suit.

It is respectfully submitted that the doctrine of res judicata does not apply, and that the trial court having decreed, as a finding of fact, that the co-defendant Catherine D. McGrew is a trustee under the deed conveying the property 3168 Eighteenth Street N. W., to her, holding the legal title to the said property in trust for the benefit of defendant John L. McGrew, who is declared to be the equitable owner of the said property, plaintiff should have the relief prayed for in her bill as to this property.

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